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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 1231.

JOHN GLENN, TRUSTEE, PLAINTIFF IN ERROR,

vs.

J. CARTER MARBURY.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JUNE 27, 1891.

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1 *Transcript of Record.*

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

Be it remembered that in the supreme court of the District of Columbia, at the times hereinafter mentioned, among others were the following proceedings, to wit:

2 *Declaration, &c. Filed March* 22, 1889.

In the Supreme Court, District of Columbia.

At Law. No. 29475.

JOHN GLENN, trustee under a deed of trust bearing date on the 20th day of September, A. D. 1866, and made by the National Express and Transportation Company, a body politic and corporate under the laws of the State of Virginia, and trustee under the decree of the chancery court of the city of Richmond, in the State of Virginia, in the suit of William W. Glenn's Administrator *et al. vs.* The National Express and Transportation Company *et al.*, for the purposes of the trusts under said deed of said corporation and said decree, substituted and appointed by the decree of said chancery court in said cause, under the laws of the State of Virginia in such case made and provided, as trustee in said deed in the room and stead of the trustees therein named, and as such substituted trustee clothed with all the rights and powers and charged with all the duties of executing the trusts of said deed, and as such substituted trustee authorized and directed by the decree of the circuit court of the county of Henrico, in said State (to which court last mentioned said cause had been duly removed and was at the time of its decree therein pending), to collect and receive a call and assessment made by said decree of said circuit court in said cause, Plaintiff,

vs.

J. CARTER MARBURY, Defendant.

3 The plaintiff, John Glenn, trustee, as herein set forth by Henry Wise Garnett and Conway Robinson, Jr., his attorneys, sues the defendant, J. Carter Marbury, for money due and owing by the defendant to the plaintiff, for that the said defendant heretofore subscribed for one hundred (100) shares of the capital stock of the National Express and Transportation Company, a body corporate and politic of the State of Virginia, duly incorporated under the laws thereof by the corporate name of The National Express and Transportation Company, and thereby, and by force of the laws of the State of Virginia in such case made and provided, the said defendant, for himself and his legal representatives and assigns, agreed, undertook, and promised that said defendant and his legal representatives and assigns would and should be liable for

and pay to said corporation, its assigns or assign, as the case might be, in case said corporation, as the holder of the calling power, made a lawful call, and would and should be liable for and pay to the agent or appointee of a court of equity of competent jurisdiction in case said corporation should become indebted and under an obligation to make a call to pay its debts, and should fail or refuse to do so, and such court, in the exercise of its lawful jurisdiction, holding the power to make a call, made a lawful call and designated such agent or appointee as the person to collect and receive the same, the sum of one hundred dollars for each and every share of the stock of said company so subscribed for by the said defendant at such time or times and in such amount or amounts as said defendant or his legal representatives or assigns might be lawfully called upon and required to pay the same, according to the legal tenor and effect of the laws under which said company was so incorporated and said subscription for said stock made by said defendant, whereby and by force of said subscription and of said laws said defendant became and was received and admitted as a stockholder in and member of said corporation, and undertook and agreed, for himself and his legal representatives and assigns,
4 to sue and be sued, implead and be impleaded, contract and be contracted with in said corporate name, as to all matters touching and affecting the property, rights, and obligations of said corporation and as to the obligations, duties, and liabilities of the defendant as a member of or stockholder in said corporation.

And the plaintiff further says that on the twentieth day of September, 1866, said corporation, by its deed of that date, duly executed, acknowledged, and recorded, assigned and transferred to John Blair Hoge, C. Oliver O'Donnell, and John J. Kelly, in trust, for the benefit of the creditors of said corporation, all its property, rights, credits, and effects of every kind, in trust; to collect all the debts, claims, and moneys payable; to reduce the same to money, and to apply the proceeds thereof to the trust declared by said deed, including the trust therein declared for the payment of the debts of said corporation and in the order of priority therein provided, and to employ agents, clerks, counsel, attorneys, and servants for the proper execution of the said trusts; and the defendant assented and agreed to said deed of trust and thereby and by reason of the facts above stated became bound and undertook and promised, for himself and his legal representatives and assigns, to pay to the trustees or trustee, as the case might be, for the time being lawfully acting in the execution of said trust for the purposes therein set forth in case said corporation, as the holder of the calling power, made a lawful call, and to pay to the agent or appointee of a court of equity of competent jurisdiction in case said corporation, being indebted and under an obligation to make a call to pay its debts, failed or refused to do so, and such court, in the exercise of its lawful jurisdiction, removed the trustees in said deed mentioned and substituted and appointed such agent or appointee as trustee in said deed in their room and stead and clothed him with all the rights and powers and charged him with all the

duties of executing the trusts of said deed which had been vested in or imposed upon the original trustees therein, and such
5 court or a court of competent equity jurisdiction, in the exercise of its lawful jurisdiction, holding the power to make a call, made a lawful call, and designated such agent or appointee (substituted as trustee in said deed as aforesaid) as the person to collect and receive the same, for each and every share of stock so, as above stated, subscribed for by said defendant as aforesaid, the balance of the one hundred dollars unpaid on each share of stock and uncalled for at the time of the making of said trust deed, in such installment or installments and at such time or times as the said defendant or his legal representatives or assigns might be lawfully called upon and required to pay the same, according to the legal tenor and effect of the laws under which said company was so incorporated and said subscription to said stock made.

And the plaintiff further says that at the time of the execution and delivery of said deed of trust the said corporation had called for and required to be paid by the persons legally bound to pay therefor, including the defendant, only a part, to wit, 20 per cent., of the par value of said stock, and had suffered and permitted the residue of said par value of said stock to remain uncalled for in the hands of the persons legally liable to pay the same, including the defendant, which said balance of 80 per cent., at the time of the execution and delivery of said deed of trust, remained in the hands of said persons legally liable to pay the same, including said defendant, to be paid by them to said corporation, its assigns or assign, as the case might be, in case said corporation, as the holder of the calling power, made a lawful call, and to be paid by them to the agent or appointee of a court of equity of competent jurisdiction in case said corporation, being indebted and under an obligation to make a call to pay its debts, should fail or refuse to do so, and such court, in the exercise of its lawful jurisdiction, holding the power to make a call, made a lawful call, and designated such agent or appointee as the person to collect and receive the same, as and when
6 the same should be lawfully called for and required to be paid, according to the terms of the subscriptions therefor and the legal tenor and effect of the laws of the State of Virginia under which said company was so incorporated and said subscription to said stock made.

And the plaintiff further says that by said deed the said corporation appointed and directed the said balance of 80 per cent. of the par value of said shares so left and remaining uncalled for in the hands of the persons legally bound to pay the same to be paid by them at such time or times and in such amount or amounts as the same might be lawfully called for and required to be paid to the trustees or trustee, as the case might be, for the time being lawfully acting in the execution of said trust for the purposes therein set forth, and the said persons so liable to pay said balance as aforesaid, including the defendant, by reason of the facts above stated, and by reason of the laws of the State of Virginia applicable to the same, and by reason of the terms of said deed of trust in the name

of said corporation, whereby they contracted, assented, and agreed, for themselves, their legal representatives and assigns, that said balance from and after the execution and delivery of said deed of trust should become and be payable to the trustees or trustee, as the case might be, for the time being lawfully acting in the execution of said trust for the purposes therein set forth in case said corporation, as the holder of the calling power, made a lawful call, and should become and be payable to the agent or appointee of a court of equity of competent jurisdiction in case said corporation, being indebted and under an obligation to make a call to pay its debts, failed or refused to do so, and such court in the exercise of its lawful jurisdiction removed the trustees in said deed mentioned, and substituted and appointed such agent or appointee as trustee in said deed in their room and stead, and clothed him with all the rights and powers and charged him with
all the duties of executing the trusts of said deed which had
7 been vested in or imposed upon the original trustee therein, and such court, or a court of competent equity jurisdiction, in the exercise of its lawful jurisdiction, holding the power to make a call, made a lawful call and designated such agent or appointee (substituted as trustee in said deed as aforesaid) as the person to collect and receive the same at such time or times and in such amount or amounts as the said balance might thereafter be lawfully called for and required to be paid according to the terms of said subscriptions and the terms of said deed and the legal tenor and effect of the laws of the State of Virginia under which said company was so incorporated and said subscriptions to said stock made and said deed of trust made.

And the plaintiff further says that the trustees so appointed by said deed failed and neglected to perform the trusts thereby created, and the validity and effect of said deed were drawn in question in the courts of various States in which the stockholders of said corporation resided, and the enforcement thereof was thereby greatly retarded and hindered; and the plaintiff further says that afterwards one William W. Glenn, of the city of Baltimore, being a judgment creditor of said corporation for a large amount, filed a bill in the State of Virginia, in the chancery court of the city of Richmond, being a court of competent jurisdiction in such cases, in his own behalf and in behalf of all other creditors of said corporation, against the said corporation and certain of its officers and against the trustees named in said deed of trust, as defendants, by which bill of complaint it was, among other things, sought to obtain from said court a judicial determination of the validity of said deed and a judicial construction thereof and the establishment of the legal effect and obligation of the same upon all property, rights, and persons affected thereby, and also to enforce the trust thereby declared in favor of the creditors of said corporation; that pending said bill said William W. Glenn died, and the suit was revived in the name of John
8 W. Wright, sheriff of the said city of Richmond, and, as such, duly constituted official administrator of said William W.

Glenn; that after such revivor an amended bill was filed, to which bill the said corporation, certain of its officers, and the said Hoge and Kelly were made defendants (the said O'Donnell having in the meantime died); that by said bill it was sought to obtain the relief prayed for in the original bill, as well as further relief, and, among other things, an account and establishment of the debts due by said corporation and secured by said deed of trust and an account of the property and estate subject to the terms of said deed, including the amount of capital stock yet remaining unpaid by the holders thereof and uncalled by said corporation and subject to be applied to the payment of the debts of said corporation, the removal of said surviving trustees and the appointment of a new trustee or trustees in their room, and an assessment or call upon the uncalled for and unpaid capital stock of said corporation and the persons liable to pay the same, for the purpose of providing means to pay the debts of said corporation, and for other appropriate relief.

And the plaintiff further says that said corporation was duly served with process in said cause, in accordance with the laws and practice of the State of Virginia; certain of its officers was summoned, and the said surviving trustees appeared voluntarily to said suit and answered said original and amended bills, whereby said court acquired full jurisdiction to decree as to all matters and things involved in said suit.

And the plaintiff further says that such proceedings were had in said cause that it was, on the 14th day of December, A. D. 1880, adjudged, ordered, and decreed in said cause by said chancery court, the same being a court of competent jurisdiction—

That the said deed of trust of September 20th, 1866, was a
9 good and valid deed under the laws of the State of Virginia, where the said corporation was chartered and had its principal office and where the said deed was executed, delivered, and recorded.

That under the laws of the State of Virginia the legal effect of the said deed was to grant, convey, and assign to the said trustees all the estate, property, rights, and credits of the said corporation of every kind and wherever situate or being, and that accordingly all of the said estate, property, rights, and credits did pass to and were vested in the said trustees by the said deed, including the credits allowed by statute and by the said corporation to its stockholders for the uncalled for and unpaid part of their several subscriptions to the capital stock of the said corporation.

That the preferences provided for by said deed in favor of certain creditors therein referred to were legal and valid according to the laws of Virginia.

That the said surviving trustees under the said deed should be, and they were thereby, respectively removed from the office of trustee under said deed, and that the said John Glenn, who is the plaintiff herein, should be, and he was thereby, substituted and appointed trustee in the said deed in their room and stead, and that he be, and he was thereby, clothed with all the rights and powers

and charged with all the duties of executing the trusts of said deed to the same effect as were the original trustees therein.

That there were numerous debts due and owing by said corporation and entitled to be paid under said deed of trust, amounting in the aggregate to a large amount, to wit, to $509,392.41, each of which debts was thereby particularly ascertained and ordered, adjudged, and decreed to be paid.

And it appearing to said court at the time of making said decree that the calls for subscriptions theretofore made by the said corporation, amounting to 20 per cent., had been exhausted or were then unavailing, and that the said corporation had then no property or assets out of which said debts or any part of them could be
10 made, except the uncalled-for and unpaid subscriptions to the capital stock of said company, amounting to 80 per cent., the right to receive and collect which, when called for, according to the contracts of subscription, as well as the former calls, was conveyed and assigned in trust as aforesaid and constituted a trust fund in the hands of the subscribers, which was primarily liable for the debts of the said corporation; and it further appearing to said court that by the second and fourth clauses of said deed of trust the trustees therein named were clothed with ample authority and power to collect, by suit or otherwise, all of the debts, claims, and moneys payable to said corporation which were assigned by said deed; and it further appearing to said court that on account of death, removal, insolvency, and other causes much of said uncalled-for and unpaid subscriptions were lost and great difficulty existed in realizing what remained good from stockholders scattered in and among so many different and distant localities and States; and that it was necessary and proper that at least 30 per cent. of said subscriptions should be then called for and required to be paid in order to meet the debts of said corporation and the costs and expenses of collecting and administering said fund; and it further appearing to said court that the said corporation had then long ceased and abandoned its business, and that for about fourteen years there had been no meeting either of the stockholders or of its board of directors; and said court being of opinion that the said corporation had not become extinct under the laws of the State of Virginia, and that the terms of said deed embraced the unpaid subscriptions of stock, and that said deed conveyed and transferred to the trustees, for the purposes of the trust, the right to receive, when called for, all such unpaid subscriptions, and that said deed carried all the credits belonging to said corporation in that respect; and the said court being further of opinion that, inasmuch as the president and directors had failed and omitted to make those rights available to its creditors by making a call and assessment
11 upon the stockholders, it was the duty of the court under the law to effectuate those rights and collect and appropriate those credits in such manner and by such means as might be necessary and proper for the execution of the trusts of the said deed, and that a call and assessment would have to be and should be made on the stockholders, it was, therefore, by said decree further adjudged,

ordered, and decreed that a call and assessment be, and the same were thereby, made upon the capital stock and stockholders of the said corporation of 30 per cent. of the par value of said stock, being $30.00 on each and every share thereof, and that the stockholders of said corporation and each and every of them and their legal representatives and assigns, including the defendant, be, and they were thereby, severally required to pay the several amounts thereby called for and assessed to the plaintiff, the said John Glenn, substituted trustee in said deed of trust, from said corporation of the 20th day of September, 1866, and the plaintiff, the said John Glenn, trustee, was thereby authorized and directed to collect and receive the said call and assessment and to take such prompt steps to that end, by suit or otherwise, and in such jurisdictions as he might be advised, and if the amount realized from said call and assessment should prove to be insufficient for the purposes of said decree liberty was thereby reserved to the said creditors and the plaintiff, the said John Glenn, trustee, to move the court for such further assessment as might be necessary and proper.

And the plaintiff further says that the plaintiff, the said John Glenn, accepted the appointment so made by said decree and complied with the terms and conditions thereof, and was and is duly qualified to act as such substituted trustee and to have the rights and powers and perform the duties conferred upon and required of him by said decree and by the subsequent decrees in said cause.

And the plaintiff further says that, by force of said decree and of the laws of the State of Virginia in such case made and pro-
12 vided, upon accepting such appointment as trustee and qualifying as such as required by said decree, the plaintiff, the said John Glenn, then and there became and was and still is substituted to all the rights, powers, duties, and responsibilities of the trustees named in said deed of trust.

And the plaintiff further says that, by reason of the premises and of the facts above mentioned, the plaintiff, the said John Glenn, as such substituted trustee for the purposes of said trust, being the trustee for the time being lawfully acting in the execution of said trust and the agent or appointee of said court as aforesaid, having been appointed as aforesaid and authorized and directed to collect said call as aforesaid under said deed of trust and said decree and the laws of the State of Virginia in such case made and provided, became and was and still is lawfully entitled to receive and collect the said assessment or call of thirty dollars per share on each and every share of stock of said corporation or any further assessment or call from the persons liable to pay the same, including the defendant.

And the plaintiff further says that, after said decree of December 14th, 1880, had been made and entered as aforesaid, the said John W. Wright, late sheriff of the city of Richmond and as such the official administrator in Virginia of the estate of said William W. Glenn, deceased, died, and, upon proper proceedings duly had in said cause as required by the practice and laws of the State of Virginia, the suit was revived as to said estate in the name of John Howard, administrator *de bonis non* of said estate in Virginia of said

William W. Glenn, deceased, who duly qualified as such administrator.

And the plaintiff further says that, after said decree of December 14th, 1880, had been made and entered as aforesaid, upon proper proceedings duly had as required by the laws of the State of Virginia for such case made and provided, the said cause was duly removed into the circuit court of the county of Henrico, in the State of Virginia, a court of competent jurisdiction in the premises.

13 And the plaintiff further says that thereafter, upon proper proceedings duly had in said cause as required by the practice and laws of the State of Virginia, the said John Howard (who was appointed and qualified as administrator *de bonis non* of the estate in Virginia of said William W. Glenn, deceased, as aforesaid) was, at his own request, duly removed and a certain John M. Glenn duly appointed and qualified in his place and stead and the suit revived as to said estate in the name of John M. Glenn, administrator *de bonis non* of the estate in Virginia of William W. Glenn, deceased.

And the plaintiff further says that thereafter, whilst said cause was pending in said court last above mentioned, such further proceedings were had in said cause that it was in said cause, on the 26th day of March, 1886, by said circuit court of the county of Henrico, in the State of Virginia, the same being a court of competent jurisdiction, adjudged, ordered, and decreed—

That, in addition to the said call of thirty per cent., it was necessary and proper to make a call for the residue of fifty per cent. remaining uncalled for and unpaid upon the capital stock of said corporation, and it was therefore further adjudged, ordered, and decreed that a call and assessment be, and the same was thereby, made upon the capital stock and stockholders of said corporation of fifty per cent. of the par value of said stock, being fifty dollars on each and every share thereof, and that the stockholders of said corporation and each and every of them and their legal representatives and assigns, including the defendant, be, and they were thereby, severally required to pay the several amounts thereby called for and assessed to the plaintiff, the said John Glenn, substituted trustee in said deed of trust from said corporation of the 20th day of September, 1866, as aforesaid.

And the plaintiff further says that it was thereby further adjudged, ordered, and decreed that the plaintiff, the said John Glenn, trustee, be, and he was by said order, judgment, and decree of March

14 26th, 1886, authorized and directed to collect and receive the said call and assessment of fifty per cent., and to take such prompt steps toward that end by suit or otherwise and in such jurisdictions as he might be advised; and, with respect to the collections to be made under said decree of March 26th, 1886, the same directions were given to the plaintiff, the said John Glenn, trustee, as were contained in the said decree of December 14th, 1880, in reference to collections to be made and proceedings to be had thereunder.

And the plaintiff further says that by force of said decree of March 26th, 1886, and of the other proceedings in said cause and of the

facts above mentioned and of the laws of the State of Virginia, the plaintiff, the said John Glenn, as such substituted trustee for the purposes of said trust, being the trustee for the time being lawfully acting in the execution of said trust and the agent or appointee of said court or courts as aforesaid, and having been appointed as aforesaid and authorized and directed to collect and receive said call of fifty per cent. as aforesaid, became and was and still is lawfully entitled to collect and receive the said assessment or call last above mentioned of fifty per cent. of the par value of said stock of said corporation, being fifty dollars on each and every share thereof, from the persons liable to pay the same, including the defendant.

And the plaintiff further says that by force of said contracts of subscription to the stock of said company and of the said incorporation of said company and of said deed of trust and of said decree of December 14th, 1880, and of said decree of March 26th, 1886, and the call and assessment thereby made, and of the facts above stated, and of the laws of the State of Virginia in such case made and provided as aforesaid, the said defendant, as a member of said corporation and as a stockholder therein of said one hundred (100) shares of its stock, under and by virtue of the legal liability of the defendant, as hereinbefore set forth, became and was indebted to and
15 liable to pay to the plaintiff in the sum of ($5,000.00) five thousand dollars, being the amount of fifty per cent. of the par value of said shares of said stock of said corporation so as aforesaid subscribed for by said defendant, and being fifty dollars on each and every share thereof so as aforesaid subscribed for by said defendant, the same having been assessed and called for by said decree of March 26th 1886, as aforesaid; and, being so indebted and liable to pay, the said defendant, in consideration thereof, promised to pay the said sum of ($5,000.00) five thousand dollars to the plaintiff when thereunto afterwards requested.

But the plaintiff further says that the defendant, although often thereafter requested so to do, did not pay the same nor any part thereof, but wholly failed and refused so to do, and the same, together with the interest thereon, remains wholly due and unpaid.

And the plaintiff claims ($5,000.00) five thousand dollars, with interest thereon, at the rate of six per centum per annum, from the 26th day of March, A. D. 1886, until paid, besides the costs of this suit.

And the plaintiff further sues the defendant, for that the defendant became indebted to the plaintiff for other money in this count mentioned, payable by the defendant to the plaintiff, for goods sold and delivered by the plaintiff to the defendant, and for work done and materials provided by the plaintiff for the defendant at his request, and for money lent by the plaintiff to the defendant, and for money paid by the plaintiff for the defendant at his request, and for money received by the defendant for use of the plaintiff, and for money found to be due from the defendant to the plaintiff on accounts stated between them; and, being so indebted, the said defendant, in consideration thereof, afterwards undertook and faithfully promised the said plaintiff to pay said plaintiff the said money

in this count mentioned when he, the said defendant, should be thereunto afterwards requested, but did not pay the same nor any part thereof, although often thereafter requested so to do, and
16 the same remains wholly due and unpaid; and the plaintiff claims ($5,000.00) five thousand dollars, with interest thereon, at the rate of six per centum per annum, from the 26th day of March, A. D. 1886, until paid, according to the particulars of demand hereto annexed, besides the costs of this suit.

HENRY WISE GARNETT AND
CONWAY ROBINSON, JR.,
Attorneys for Plaintiff.

The defendant is to plead hereto on or before the first day of the first special term of the court occurring twenty days after service hereof; otherwise judgment.

HENRY WISE GARNETT AND
CONWAY ROBINSON, JR.,
Attorneys for Plaintiff.

Particulars of Demand.

J. Carter Marbury, Dr.

To the plaintiff, John Glenn, trustee under a deed of trust bearing date on the 20th day of September, A. D. 1866, and made by the National Express and Transportation Company, a body politic and corporate under the laws of the State of Virginia, and trustee under the decree of the chancery court of the city of Richmond, in the State of Virginia, for the purposes of the trusts under said deed of said corporation and said decree.

The said John Glenn, in the suit of William W. Glenn's administrator and others *vs.* The National Express and Transportation Company and others, in said court then pending, having been by the laws of the State of Virginia in such case made and provided, and by the decree of said court in said cause entered heretofore, to wit, on the 14th day of December, A. D. 1880, duly substituted and appointed trustee in said deed in the room and stead of the
17 trustees in said deed named, and clothed with all the rights and powers and charged with all the duties of executing the trusts of said deed to the same effect as were the original trustees named in said deed.

For fifty per cent. of the par value of one hundred (100) shares of the capital stock of said corporation, of which said shares the par value is one hundred dollars per share, and of which said shares of said stock of said corporation the said J. Carter Marbury, as the original subscriber for said shares, became and was and is still the holder, said fifty per cent. of the par value of said shares of said stock having been heretofore, to wit, on the 26th day of March, A. D. 1866, in said cause, by competent authority, to wit, by the decree of the circuit court of the county of Henrico, in the State of Virginia (to which court said cause had been duly removed according to law

and was therein pending), assessed and called for and required to be paid to the plaintiff, the said John Glenn, substituted trustee as aforesaid, who was by said decree last mentioned authorized and directed to collect and receive the said call and assessment of fifty per cent. and to take such prompt steps toward that end, by suit or otherwise, and in such jurisdictions as he might be advised, said assessment and call amounting to $5,000, with interest thereon, at the rate of six per centum per annum, from the 26th day of March, A. D. 1886, until paid.

18 *Affidavit.*

DISTRICT OF COLUMBIA, *ss:*

I, John Glenn, having been first duly sworn according to law, do depose and upon oath say that I am the same John Glenn named as plaintiff in the annexed declaration, and that I have a cause of action against J. Carter Marbury, and that my cause of action is money due me by the said J. Carter Marbury for that the said J. Carter Marbury heretofore subscribed for one hundred (100) shares of the capital stock of the National Express and Transportation Company, a body politic and corporate of the State of Virginia, duly incorporated under the laws thereof by the corporate name and style of the National Express and Transportation Company, and became and was received and admitted as a stockholder in said company, and thereby and by force of the laws of the State of Virginia in such case made and provided, for a valuable consideration, undertook, promised, and agreed to pay for each and every share of said stock so subscribed for as aforesaid the sum of one hundred dollars, in such instalment or instalments and at such time or times as the said J. Carter Marbury or his personal representatives or assigns might be lawfully called upon and required to pay the same, according to the legal tenor and effect of the laws of the State of Virginia, under which said company was so incorporated and said subscription to said stock made.

That afterwards, on the twentieth day of September, 1866, the said corporation, being largely indebted by its deed of that date, duly executed, acknowledged, and recorded, assigned and transferred to John Blair Hoge, C. Oliver O'Donnell, and John J. Kelly, in trust for the benefit of the creditors of said corporation, all its property, rights, credits, and effects of every kind in trust, to reduce the same to money, and to apply the proceeds thereof to the trust declared by said deed, including the trust therein declared for the payment of the debts of said corporation; and that afterwards a certain William W. Glenn, being a judgment creditor of said corporation to a large amount, on his own behalf and on behalf of all other creditors of said corporation, filed a bill of complaint in the chancery court of the city of Richmond, in the State of Virginia, against said corporation, certain of its officers, and the trustees named in said deed, as defendants, and that pending said suit the said William W. Glenn died and the suit was revived in the name of the administrator *de bonis non* of said William W. Glenn, deceased, and thereafter an

amended bill was filed in said cause, to which bill said corporation, certain of its officers, and the said Hoge and Kelly were made defendants (the said O'Donnell having in the meantime died); that by said bill it was sought to obtain the relief prayed for in the original bill, as well as further relief, and, among other things, an account and establishment of the debts due by said corporation and secured by said deed of trust and an account of the property and estate subject to the terms of said deed, including the amount of capital stock yet remaining unpaid by the holders thereof and uncalled by said corporation or otherwise, and subject to be applied to the payment of the debts of said corporation; the removal of said surviving trustees and the appointment of a new trustee or trustees in the room and stead of the trustees named in said deed, and an assessment or call upon the uncalled for and unpaid capital stock of said corporation and the persons liable to pay the same, for the purpose of providing means to pay the debts of said corporation and for other appropriate relief; that said corporation was duly served with process in said cause, in accordance with the laws and practice of the State of Virginia; certain of its officers were summoned, and the said surviving trustees appeared voluntarily to said suit and answered said original and amended bills, whereby said court acquired full jurisdiction to decree as to all matters and things involved in said suit.

That in said cause, instituted and depending in said chancery court as aforesaid, such proceedings were had that it was, on the 14th day of December, A. D. 1880, adjudged, ordered, and decreed by said chancery court, the same being a court of competent jurisdiction, that the said deed of trust of September 20th, 1866, was in all respects a good and valid deed under the laws of the State of Virginia; and that under the laws of the State of Virginia the legal effect of said deed was to grant, convey, and assign to the said trustees all the estate, property, rights, and credits of the said corporation of every kind and wherever situate or being, and that, accordingly, the same did pass to and were vested in the said trustees by said deed, including the credits allowed by statute and by the said corporation to its stockholders for the uncalled for and unpaid part of their several subscriptions to the capital stock of the said corporation.

19 That the surviving trustees under said deed should be, and they were thereby, respectively removed from the office of trustee under said deed, and that this affiant, the said John Glenn, should be, and he was by said decree, substituted and appointed trustee to execute the trusts of said deed of trust in the room and stead of the trustees originally created by said deed of trust and to whom said deed was executed as aforesaid.

That it was in said cause and by said court further adjudged, ordered, and decreed that there were numerous debts due and owing by said corporation, amounting in the aggregate to a large amount, to wit, to $509,392.41, secured by said deed of trust of said corporation, remained unpaid and entitled to be paid out of the property conveyed by said deed, each of which debts was thereby particularly ascertained and ordered, adjudged, and decreed to be paid, and that

of the sum of one hundred dollars for each and every share of the stock of said corporation undertaken and promised to be paid for by the subscribers for said stock and their assigns, stockholders of said corporation, in such instalments and at such times as said subscribers and their assigns might be lawfully required to pay the same, according to the legal tenor and effect of the laws under which said company was so incorporated and said stock subscribed for, the sum of eighty dollars per share had never theretofore been called for or required to be paid by the said corporation or otherwise, and that said sum of eighty dollars per share for each and every share of said stock subscribed for yet remained liable to be called for and required to be paid by the subscribers for said stock and their assigns, stockholders of said corporation, according to the legal tenor and effect of their subscriptions for the same as hereinbefore set forth.

And that it was further adjudged, ordered, and decreed that it was necessary and proper that 30 per cent. of the par value of each share of said stock should be called for and required to be paid by the subscriber therefor and his assigns, for the purpose of paying the debts of said corporation under the provisions of said deed of trust, and it was accordingly adjudged, ordered, and decreed by said court in said cause that a call and assessment be, and the same was thereby, made upon the stock and stockholders of said corporation and their legal representatives and assigns of 30 per centum of the par value of said stock, being thirty dollars on each and every share thereof, the same, when paid, to be paid to and received by this affiant, the said John Glenn, as trustee under said deed, in the room and stead of the original trustees therein named.

That it was further adjudged, ordered, and decreed that this affiant, as such substituted trustee, be, and he was by said decree, authorized and directed to collect and receive the said call and assessment and to take such prompt steps to that end, by suit or otherwise, and in such jurisdictions as he might be advised.

And that this affiant accepted the appointment so made by said decree and complied with the terms and conditions thereof, and was and is duly qualified to act as such substituted trustee and to have the rights and perform the duties conferred upon and required of him by said decree and by the subsequent decrees in said cause.

And that this affiant, the said John Glenn, by force of said decree and of the laws of the State of Virginia in such case made and provided, upon accepting such appointment as trustee and qualifying as such as required by said decree, then and there became and was and still is substituted to all the rights, powers, duties, and responsibilities of the trustees named in said deed of trust, and became and was and still is lawfully entitled to receive and collect the said assessment or call of thirty dollars per share on each and every share of stock of said corporation from the person liable to pay the same.

That after said decree of December 14th, 1880, had been made and entered as aforesaid, upon proper proceedings, duly had as required by the laws of the State of Virginia for such case made and provided, the said cause was duly removed into the circuit court of

the county of Henrico, in the State of Virginia, a court of competent jurisdiction in the premises.

And that thereafter, whilst said cause was pending in said court last-above mentioned, such further proceedings were had in said cause that it was, in said cause, on the 26th day of March, 1886, by said circuit court of the county of Henrico, in the State of Virginia, the same being a court of competent jurisdiction, adjudged, ordered, and decreed—

That in addition to the said call of thirty per cent. it was necessary and proper to make a call for the residue of fifty per cent. remaining uncalled for and unpaid upon the capital stock of said corporation, and it was therefore further adjudged, ordered, and decreed that a call and assessment be, and the same was thereby, made upon the capital stock and stockholders of said corporation of fifty per cent. of the par value of said stock, being fifty dollars on each and every share thereof, and that the stockholders of said corporation and each and every of them and their legal representatives and assigns, including the said J. Carter Marbury, be, and they were thereby, severally required to pay the several amounts thereby called for and assessed to this affiant, the said John Glenn, substituted trustee in said deed of trust from said corporation, of the 20th day of September, 1866, and that it was thereby further adjudged, ordered, and decreed that this affiant, the said trustee, John Glenn, be, and he was by said order, judgment, and decree of March 26th, 1886, authorized and directed to collect and receive the said call and assessment of fifty per cent. and to take such prompt steps toward that end, by suit or otherwise, and in such jurisdictions as he might be advised.

And this affiant, the said John Glenn, further says that by force of said decree of March 26th, 1886, and of the other proceedings in said cause and of the facts above mentioned and of the laws of the State of Virginia in such case made and provided, this affiant, the said John Glenn, as such substituted trustee for the purposes of said trust, being the trustee for the time being lawfully acting in the execution of said trust and the agent or appointee of said court or courts as aforesaid, and having been appointed as aforesaid and authorized and directed to collect and receive said call of 50 per cent. as aforesaid, became and was and still is lawfully entitled to collect and receive the said assessment or call last above mentioned of fifty per cent. of the par value of said stock of said corporation, being fifty dollars on each and every share thereof, from the persons liable to pay the same, including the said J. Carter Marbury.

That by force of the said contract of subscription to the stock of said company and of the said deed and of said decrees and of said call and assessment so made by said decree of March 26th, A. D. 1886, and of the facts above mentioned and of the laws of the State of Virginia in such case made and provided, the said J. Carter Marbury became and is indebted to and liable to pay to this affiant, the said John Glenn, in the sum of ($5,000.00) five thousand dollars, with interest thereon at the rate of six per centum

per annum until paid, being the amount of fifty per centum of the par value of said one hundred shares of said stock of said corporation so as aforesaid subscribed for, the same having been assessed and called for by said decree of March 26th, 1886, as aforesaid, and that there is due to this affiant from the said J. Carter Marbury ($5,000.00) five thousand dollars, with interest thereon at the rate of six per centum per annum from the 26th day of March, A. D. 1886, until paid, exclusive of all set-offs and just grounds of defense.

JOHN GLENN.

Subscribed and sworn to before me this 22d day of March, A. D. 1889.

[SEAL.] HARVEY S. W. DE GAW,
Notary Public.

21 *Summons. Issued March* 23, 1889.

In the Supreme Court of the District of Columbia the 23 day of March, 1889.

JOHN GLENN, Trustee, &c., Plaintiff,
vs.
J. CARTER MARBURY, Defendant. } At Law. No. 29475.

The President of the United States to the defendant, Greeting:

You are hereby commanded to appear & in this court, on the first day of its first special term, occurring 20 days after service of this writ on you, to answer the plaintiff's suit and show why he should not have judgment against you for the cause of action stated in his declaration.

Witness E. F. Bingham, chief justice.

[SEAL.] R. J. MEIGS, *Clerk*,
By J. R. YOUNG,
Assistant Clerk.

GARNETT, ROBINSON, *Attorneys.*

NOTE.—The special terms of the court commence on the first Tuesday of every month except August, in which month there is no term of the court.

22 *Marshal's Return.*

Served copies of the declaration, notice to plead, affidavit, and this summons on the defendant the 23d day of March, 1889.

A. A. WILSON, *Marshal.*

Motion for Security for Costs. Filed April 23, 1889.

In the Supreme Court of the District of Columbia.

JOHN GLENN, Trustee, &c., vs. J. CARTER MARBURY. } At Law. No. 29475.

And now comes the defendant, by J. J. Johnson, his attorney, and moves the court that the plaintiff be required to give security for costs, and that the said defendant be not required to plead to the declaration herein filed until such security is given.

J. J. JOHNSON,
Att'y for Defendant.

WASHINGTON COUNTY, *District of Columbia,* } *To wit.*

23 J. Carter Marbury, being duly sworn, deposes and says that the plaintiff, John Glenn, named above, is a non-resident of the District of Columbia, and that if the said suit is decided against him he has no property in the District of Columbia out of which the costs could be collected.

J. CARTER MARBURY.

Subscribed and sworn to before me on this 23d day of April, A. D. 1889.

R. J. MEIGS, *Clerk,*
By J. R. YOUNG, *Ass't Clerk.*

Court Proceedings.

Proceedings before the supreme court of the District of Columbia, holding a circuit court in and for said District, commencing the fourth Monday, it being the 28th day, of January, A. D. 1889.

MONDAY, *January 28th, A. D.* 1889.

By order of Chief Justice Edward F. Bingham, one of the justices of said supreme court, presiding, the court is opened by proc-
24 lamation of the marshal, pursuant to rule of court.

SATURDAY, *May 4th, A. D.* 1889.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * * * *

JOHN GLENN, Trustee, &c., Pl'ff, vs. J. CARTER MARBURY, Def't. } At Law. No. 29475.

Upon hearing the defendant's motion to require the plaintiff to give security for costs, the court orders the plaintiff to give security for costs, and that the defendant have ten days to plead after security for costs is given.

Docket Entry.

1889, May 21.—$25 deposited by pl'ff as security for costs.

25 *Defendant's Pleas & Affidavit. Filed July* 10, 1890.

In the Supreme Court of the District of Columbia.

JOHN GLENN, Trustee, &c., Plaintiff,
vs.
J. CARTER MARBURY, Defendant. } At Law. No. 29475.

The defendant, J. Carter Marbury, for pleas to the plaintiff's declaration and to each of the several counts thereof, severally says:

1. For a first plea, that he was never indebted as alleged.
2. And for a second plea, that he never promised as alleged.
3. And for a third plea, that the plaintiff's alleged cause of action did not accrue within three years before the institution of this suit.
4. And for a fourth plea, that the chancery court of the city of Richmond had no jurisdiction to make the decree of the fourteenth day of December, A. D. 1880, in the declaration mentioned.

26 5. And for a fifth plea, that the plaintiff, claiming to sue as trustee, as set forth in his declaration, has no right to sue in this court.

6. And for a sixth plea, that the plaintiff, claiming to sue as trustee, as set forth in his declaration, has no right to sue in his own name in this court.

J. J. JOHNSON,
Attorney for Defendant.

DISTRICT OF COLUMBIA, *ss:*

J. Carter Marbury, the defendant in the above-entitled cause, being duly sworn, deposes and says that he is not indebted to the plaintiff as alleged, and that he never undertook or promised to pay as alleged; that, as he is advised and believes, the plaintiff's pretended claim is barred by the statute of limitation in such case made and provided; that the plaintiff, claiming as set forth in his declaration, has no right to sue in this court; that the plaintiff, claiming as set forth in his declaration, has no right to sue in his own name in this court; that the chancery court of the city of Richmond had

27 no jurisdiction to make the decree of the fourteenth day of December, A. D. 1880, in the declaration mentioned, and that the matters and things set forth in the plaintiff's declaration constitute no liability on the part of the defendant to the plaintiff, and that all the pretended proceedings set forth in the declaration were had without notice of any kind to this defendant, and as to him were and are therefore fraudulent, null, and void.

J. CARTER MARBURY.

Subscribed and sworn to before me this tenth day of July, A. D. 1890.

[SEAL.] L. I. O'NEAL,
Notary Public, D. C.

Joinder of Issue. Filed Oct. 1, 1890.

In the Supreme Court of the District of Columbia, the First Day of October, A. D. 1890.

JOHN GLENN, Trustee, &c., Plaintiff,
vs.
J. CARTER MARBURY, Defendant. } At Law. No. 29475.

28 And now comes the plaintiff, by his attorneys, Henry Wise Garnett and Conway Robinson, Jr., and says that the plaintiff joins issue with the defendant upon the defendant's six pleas filed in this cause.

HENRY WISE GARNETT AND
CONWAY ROBINSON, JR.,
Attorneys for Plaintiff.

Note of Issue. Filed Oct. 1, 1890.

In the Supreme Court of the District of Columbia, the First Day of October, A. D. 1890.

JOHN GLENN, Trustee, &c., Plaintiff,
vs.
J. CARTER MARBURY, Defendant. } At Law. No. 29475.

Last pleading filed October first, 1890.

J. J. JOHNSON,
Attorney for Defendant.

HENRY WISE GARNETT &
CONWAY ROBINSON, JR.,
Attorneys for Plaintiff.

HENRY WISE GARNETT AND
CONWAY ROBINSON, JR.,
Attorneys for Plaintiff.

29 *Stipulation of Counsel. Filed Oct.* 13, 1890.

In the Supreme Court of the District of Columbia, the Seventh Day of October, A. D. 1890.

JOHN GLENN, Trustee, &c., Plaintiff,
vs.
J. CARTER MARBURY, Defendant. } No. 29475, at Law (Cal. 711), and No. 29920, at Law (Cal. 315).

It is hereby stipulated and agreed by and between the undersigned, counsel for the plaintiff and defendant, respectively, in the above-

entitled causes, that they shall be considered as exchanged in their places on the calendar, and that cause number 29475, at law, shall be substituted in the place of cause number 24920, at law, and shall be tried first.

HENRY WISE GARNETT AND
CONWAY ROBINSON, JR.,
Attorneys for Plaintiff in said Causes.
J. J. JOHNSON,
Attorney for Defendant in said Causes.

Endorsed: Approved Oct. 13, '90. M. V. Montgomery, justice.

30 *Court Proceedings.*

Proceedings before the supreme court of the District of Columbia, holding a circuit court and special term in and for said District, commencing the first Tuesday, it being the 7th day, of October, A. D. 1890.

TUESDAY, *October 7th, A. D.* 1890.

By order of Martin V. Montgomery, justice, one of the justices of said supreme court, presiding, the court is opened by proclamation of the marshal, pursuant to rule of court.

MONDAY, *October 13th, A. D.* 1890.

Session resumed pursuant to adjournment, Montgomery, justice, presiding.

* * * * * * *

JOHN GLENN, Trustee, &c., Plaintiff,
vs.
J. CARTER MARBURY, Defendant.
} No. 29475, at Law (Cal. No. 711), and at Law, No. 24920 (Cal No. 315).

Upon consideration of the stipulation filed in the above-entitled causes, and upon motion of the plaintiff and defendant, by
31 their respective attorneys, in both of said causes, it is, this 13th day of October, A. D. 1890, by the court hereby ordered that said causes shall be considered as exchanged and are hereby exchanged in their places on the calendar, and that cause number 29475, present calendar number 711, at law, shall be substituted in the place of cause number 24920, at law, present calendar number 315, and shall be tried first.

Stipulation of Counsel. Filed Nov. 28, 1890.

In the Supreme Court of the District of Columbia.

JOHN GLENN, Trustee, &c., Plaintiff,
vs.
J. CARTER MARBURY, Defendant.
} At Law. No. 29475.

It is hereby admitted, stipulated, and agreed between the counsel for the plaintiff and defendant, J. Carter Marbury, as follows: That

the said defendant became an original stockholder in the
32 National Express and Transportation Company, and was an original subscriber therein for the one hundred shares of stock mentioned in the declaration, for which stock he received the certificate and has paid twenty per cent. only on his said subscription; and, further, that the record certified by George W. Carter, clerk of the circuit court of Henrico county, Virginia, on the 5th day of August, 1886, for identification marked Exhibit "A," of the proceedings in the case of Glenn's administrator, &c., *versus* The National Express and Transportation Company *et al.*, begun in the chancery court of the city of Richmond and transferred to the circuit court of Henrico county, Virginia, and now pending in said circuit court, may be read in evidence as a sufficient transcript of the record of the proceedings in said cause; and, further, that either side may read in evidence from said record any document appearing therein, which might be proved by a duly certified copy of such document. Any document which may be so read in evidence from said record shall have the same legal effect as a duly certified
33 copy of such document would be entitled to if offered in evidence and be subject to like exceptions.

Nov'r 24th, 1890.

HENRY WISE GARNETT,
Att'y for Pl'ff.

J. J. JOHNSON,
Attorney for Defendant.

FRIDAY, *November 28th, A. D.* 1890.

Session resumed pursuant to adjournment, Montgomery, justice, presiding.

* * * * * * *

JOHN GLENN, Trustee, &c., Pl'ff,
vs.
J. CARTER MARBURY, Def't. } At Law. No. 29475.

Now comes here as well the plaintiff, by his attorneys, Messrs. Garnett & Robinson, as the defendant, by his attorney, Mr. J. J. Johnson, and a jury of good and lawful men of this District, to wit, John F. Vogt, W. L. Anderson, Thornton A. Jackson, Thomas L. Wade, James C. McGir, Guy Carlton, John H. Thornton, P. Kennedy, George Cartner, P. C. Garden, Frank G. Davidson, and Horace Jones, who, being duly sworn to try the issues above joined,
34 after the case is given them in charge on their oath say they find said issues in favor of the defendant. Therefore it is considered that the plaintiff take nothing by his suit, and that the defendant go thereof without day and recover against said plaintiff the costs of his defense, taxes at $—, and have execution thereof.

MONDAY, *December 1st, A. D.* 1891.

Session resumed pursuant to adjournment, Montgomery, justice, presiding.

* * * * * * *

JOHN GLENN, Trustee, &c., Pl'ff,
vs.
J. CARTER MARBURY, Def't. } At Law. No. 29475.

Now comes the plaintiff, by his attorneys, Messrs. Garnett & Robinson, and files his motion for a new trial.

35 *Motion for a New Trial. Filed Dec.* 1, 1890.

In the Supreme Court of the District of Columbia.

JOHN GLENN, Trustee, &c., Plaintiff,
vs.
J. CARTER MARBURY, Defendant. } At Law. No. 29475.

Now comes the plaintiff, by his attorneys, Henry Wise Garnett and Conway Robinson, Jr., and moves the court to set aside the verdict and judgment in the above-entitled cause and to grant a new trial therein for the following reasons and upon the following grounds, and—

1st. Because of errors of law in the rulings of the justice presiding at the trial of said cause.

2nd. Because of errors of law founded on the exceptions reserved on behalf of the plaintiff during the trial and noted on the minutes of the justice who tried the above-entitled cause.

3rd. Because the evidence was insufficient in law to sustain a verdict for the defendant in the above-entitled cause.

36 4th. Because on the evidence given on behalf of the plaintiff and defendant it was an error of law for the court to take the case from the jury and to instruct them to find a verdict for the defendant.

5th. Because upon the evidence given the court should have instructed the jury that they must find for the plaintiff in the above-entitled cause.

6th. Because the verdict is contrary to the evidence.

7th. Because the court erred in admitting the evidence offered on behalf of the defendant during the trial of the above-entitled cause, and for said error should set aside the verdict and judgment and grant a new trial.

8th. Because the court erred in rejecting the plaintiff's prayers, and for said errors and for each of them should set aside the verdict and judgment and grant a new trial.

9th. Because the court erred in granting the defendant's prayer, and for said error should set aside the verdict and judgment and grant a new trial.

10th. Because the court erred in its charge to the jury, and for the errors of law in said charge should set aside the verdict and judgment and grant a new trial.

37 11th. Because the court erred in holding and ruling that the plaintiff could not maintain this action as brought in his own name upon the pleadings and evidence in the above-entitled cause.

12th. Because the court erred in holding that, under the pleadings and evidence in the above-entitled cause, the defendant was entitled to raise any objection at that stage of the cause to the right of the plaintiff to maintain this action as brought in his own name.

13th. And the plaintiff also moves the court to set aside the verdict and judgment and grant a new trial in the above-entitled cause upon bills of exceptions.

HENRY WISE GARNETT,
CONWAY ROBINSON, JR.,
Att'ys for Pl'ff.

Court Proceedings.

SATURDAY, *December 27th, A. D.* 1890.

Session resumed pursuant to adjournment, Montgomery, justice, presiding.

* * * * * * *

JOHN GLENN, Trustee, &c., Pl'ff,
vs.
J. CARTER MARBURY, Def't. } At Law. No. 29475.

38 Upon hearing the plaintiff's motion for a new trial it is considered that said motion be, and the same is hereby, overruled; and now again comes here the said plaintiff, by his said attorneys, and tenders to the court here his bills of exceptions taken on the trial of this case and prays that they may be duly signed, sealed, and made a part of the record now for then, which is done accordingly.

Appeal to General Term. Filed Dec. 27, 1890.

In the Supreme Court of the District of Columbia.

JOHN GLENN, Trustee, &c., Plaintiff,
vs.
J. CARTER MARBURY, Defendant. } At Law. No. 29475.

And now comes the plaintiff, before the signing and sealing of the bills of exceptions in the above-entitled cause, and prays and takes an appeal to the court in general term from the overruling of the plaintiff's motion to set aside the verdict and judgment in the above-entitled cause and to grant a new trial therein, and from the decision of the justice on such motion and from his overruling of the same the plaintiff then and there appealed.

HENRY WISE GARNETT AND
CONWAY ROBINSON, JR.,
Attorneys for Plaintiff.

39 *Bills of Exceptions. Filed Dec.* 27, 1890.

In the Supreme Court of the District of Columbia.

JOHN GLENN, Trustee, &c., Plaintiff,
vs.
J. CARTER MARBURY, Defendant. } At Law. No. 29475.

Be it remembered that at the trial of this cause, before the Honorable M. V. Montgomery, an associate justice of the supreme court of the District of Columbia, and a jury of twelve good and lawful men duly empanelled and sworn according to law to try the issues joined between the plaintiff and defendant in the above-entitled cause, the plaintiff, to maintain the issues on his part joined, offered and gave in evidence a certified copy of the record of a certain chancery cause against the National Express and Transportation Company *et al.*, commenced in the chancery court of the city of Richmond, in the State of Virginia, and afterwards duly and regularly transferred according to law to the circuit court of the county of Henrico, in the said State of Virginia, the said certified copy of said chancery cause being marked Exhibit "A" for identification,
40 and the same was by the court admitted in evidence without any objection on the part of the defendant, and was read in evidence, and the same is in the words and figures following, to wit:

Exhibit "A".

IN THE

Chancery Court of the City of Richmond.

W. W. Glenn's administrator, &c.,

v.

The National Express and Transportation Company and others.

VIRGINIA:

PLEAS before the judge of the chancery court of the city of Richmond.

Be it remembered that heretofore, to wit: on the 28th day of November, 1871, came the plaintiff, W. W. Glenn, sueing on his own behalf and of such other creditors of the National Express and Transportation Company as may become parties to this suit and contribute to the expenses thereof, by counsel, and sued out of the clerk's office of the chancery court of the city of Richmond, subpœnas in chancery against the defendants, William H. Perot, president of said company; William Davies, D. J. Foley, M. G. Harman, Joseph R. Anderson, F. P. Zimmerman, J. Carter Mowbray, William H. Webb, Lorenzo Norvell, John Blair Hoge, C. Oliver O'Donnell and John J. Kelly, directed to the sheriffs of the city of Richmond and town of Staunton and returnable to 1st December Rules, 1871; which subpœnas in chancery and returns of the sheriffs thereon are in the words and figures following, to wit:

SUBPŒNAS.

The Commonwealth of Virginia,

To the Sheriff of the city of Richmond—Greeting:

We command you that you summon William H. Perot, president of said company; William Davies, D. J. Foley, M. G. Harman, Joseph R. Anderson, F. P. Zimmerman, J. Carter Mowbray, Wm. H. Webb, Lorenzo Norvell, John Blair Hoge, C. Oliver O'Donnell and John J. Kelly, to appear at the clerk's office of the court of chancery of the city of Richmond, at the rules to be held for the

said court on the first Monday in December, 1871, to answer a bill in chancery, exhibited against them in our said court by W. W. Glenn, sueing on his own behalf and of such other creditors of the National Express and Transportation Company, a company chartered and incorporated under the laws of the state of Virginia, as may become parties to this suit and contribute to the expenses thereof. And have then there this writ.

Witness, Benjamin H. Berry, clerk of our said court, at the court-house, the 28th day of November, 1871, and in the 96th year of our foundation.

BENJ. H. BERRY.

RETURN.

Executed on Joseph R. Anderson November 25th, 1871, by delivering him a true copy of the within *spa.* in chan. The others not found.

BENJ. T. AUGUST, D. S.,
For John W. Wright, S. C. R.

Executed in the city of Richmond, said Anderson being a resident of said city.

The Commonwealth of Virginia,

To the Sheriff of the town of Staunton—Greeting:

We command you that you summon W. G. Harman to appear at the clerk's office of the court of chancery of the city of Richmond, at the rules to be held for the said court on the first Monday in December, 1871, to answer a bill in chancery, exhibited against him and others in our said court by W. W. Glenn, sueing in his own behalf and of such other creditors of the National Express and Transportation Company, a company chartered and incorporated under the laws of the state of Virginia as may become parties to this suit and contribute to the expenses thereof. And have then there this writ.

Witness, Benjamin H. Berry, clerk of our said court, at the court-house, the 28th day of November, 1871, and in the 96th year of our foundation.

BENJ. H. BERRY.

RETURN.

Executed December 4th, 1871, as to M. G. Harman, by leaving at his residence in the city of Staunton with a white member of his family over sixteen years of age a copy of this "chy. *spa.*," ex-

plained its purport, and requested that the same be handed to said M. G. Harman on his return, he being from home at the time.

W. L. MAURY, S. A. Co.

And at another day, to-wit: At rules held in the clerk's office of the chancery court of the city of Richmond on the first Monday, being the 4th day of December, 1871, came the plaintiff and filed his bill, which bill and exhibits therewith are in the words and figures fellowing, to wit:

BILL.

W. W. Glenn
vs.
The National Express and Transportation Comp'y and others.

To the Honorable Edward H. Fitzhugh, judge of the chancery court of the city of Richmond.

Humbly complaining, showeth unto your Honor, your orator, William W. Glenn, of Baltimore city, who files this bill on behalf of himself and such other creditors of the National Express and Transportation Company as may become parties to this suit, and contribute to the expenses thereof, that your orator is a creditor of the National Express and Transportation Company to the amount of $42,501.31, with interest thereon from the 24th day of June, 1870, for which sum your orator recovered a judgment against said company, in the superior court of Baltimore city, on the 24th day of June, 1870, as will appear by a short copy of said judgment herewith filed and made a part of this bill, marked Complainant's Exhibit, W. W. G., No. 1, and full transcript of which judgment your orator will produce when thereto required.

And your orator charges that said National Express and Transportation Company was duly incorporated by the Legislature of the state of Virginia on the —— day ——, 1865, as will appear from the act of incorporation found among the printed laws of said state, to which reference is hereby made, and a copy whereof will be produced when required.

And your orator further charges that said company accepted said act of incorporation, and proceeded to conduct its business in pursuance thereof until the 20th day of September, 1866, when said company having become much emba-rassed in its affairs, and owing large debts to various persons, executed a deed of trust for the benefit of its creditors to the defendants, John Blair Hoge, C. Oliver O'Donnell and John J. Kelly, dated the 20th day of September, 1866, which was duly recorded in the city of Richmond, in the city of Baltimore, and elsewhere, and a copy of which is

hereinwith filed, and made a part of this bill, marked Complainant's Exhibit, W. W. G., No. 2.

And your orator further charges that the assets of said company, to which its creditors have to look mainly for the payment of their debts, consist of the amounts contracted to be paid by the subscribers to its capital stock.

And your orator charges that the total number of shares of the stock of said company, which had been subscribed for at the date of said assignment was 40,044, each share being of the par value of $100, and said subscriptions, representing the large aggregate of 4,004,400, and that on the 29th day October, 1866, the condition of said company with reference to its stock and debts was reported at a meeting of stockholders as follows:

There had then been subscribed for of the stock of said company

557	shares	on	which	nothing	had	been	paid.	
1,154	"	"	"	1 per cent.	had	been	paid,	but no certificates issued.
2,169	shares	on	which	5 per cent.	had	been	paid.	
20	"	"	"	7½	"	"	"	"
8,087	"	"	"	10	"	"	"	"
25	"	"	"	11	"	"	"	"
20	"	"	"	12½	"	"	"	"
250	"	"	"	13	"	"	"	"
12,554	"	"	"	15	"	"	"	"
20	"	"	"	15½	"	"	"	"
15,188	"	"	"	20	"	"	"	"
40,044	shares.							

And your orator charges that the subscribers to the capital stock of said company resided and now reside in many states, and not within the jurisdiction of any one court.

And your orator further charges that by the terms of the subscription, the subscribers were bound to pay the amount of said subscriptions, as and when the same should be called for by said company.

And your orator further charges that the total amount of assessments or calls made by said company upon its stockholders was twenty per cent. of the amount of the subscriptions, and that the amounts paid in money or by notes upon said calls of twenty per cent. are correctly set forth above.

And he is informed and believes, and believing charges that a very small part, if any, of the said assessments to the amount of twenty per cent., which remained unpaid at the date of said report, has been since paid or collected from the delinquent stockholders.

And your orator further charges that no subsequent call or assessment was made upon its stockholders by said company, and that eighty per cent. of the amount of said subscriptions remains uncalled for and unpaid.

And your orator charges that said trustees were not requested to take possession of said trust estate under said deed until on or about the 3rd day of November, 1866, and that in the meantime nearly all of the visible property of said company had been levied upon and taken under legal process by its creditors, and that the amount of the same was wholly insufficient to pay the debts of said company.

And he further charges that said company had hypothecated or otherwise used, and parted with a considerable amount of the notes and other obligations received by it from stockholders on account of amounts due by them on said calls, and he charges that the actual amount of money realized and received by said trustees under said assignment was not sufficient to pay the debts due the preferred creditors of the first class, mentioned in said deed of trust.

And your orator further charges that of the amount of the said assessments upon the subscribers of twenty per cent. a large part cannot be collected at all, by reason of the insolvency of the subscribers, and your orator is informed and believes, and believing charges, that a large part of said assessments has been lost by the lapse of time, and cannot now be collected.

And your orator further charges that as to the debts due upon said unpaid assessments, said trustees allege that they have been hindered and delayed in the collection of the same by adverse litigation in the state of Maryland and in the state of New York and in other states. And he charges that it is represented by said trustees that their right to collect the debts due the company by subscribers on said assessments, has been called in question in some of the suits, and the validity of said deed of trust has been disputed.

And your orator further charges that in some of said suits said trustees have been enjoined from proceeding to collect the debts due said company, and said trustees have thus far been able, as they represent, to collect very little, if any, of said debts, by reason of the difficulties interposed by said litigation.

And so your orator charges that the debts due said company and which ought to be applied to the payment of its creditors, are either now lost in a great part, or are in danger of being lost, and are not now available for the payment of said creditors.

And your orator further charges that even if said trustees can surmount the embarrassments and difficulties which they allege have prevented them hitherto from realizing said assets, the amount

which can be realized from all the property which passed to said trustees, and which could under any circumstances be realized by them, would be entirely inadequate to pay the just debts of said company.

For your orator is advised and respectfully submits, that by the true construction of said deed of trust, no part of the eighty per cent. of subscriptions to said capital stock, which had not been called for by said company from its subscribers, passed to said trustees, nor any power to sue for or collect said subscription so uncalled for, but that the relations between said company and its subscribers, and their legal rights and obligations as to said uncalled for part of said subsciptions, remained unaffected by said deed of trust.

And your orator is advised and respectfully submits, that under said deed of trust, assuming the same to be valid, said trustees acquired no right to sue a subscriber for his subscription to said stock, except to the extent that said company could sue such subscriber, and your orator is advised and respectfully submits, that said company could not sue one of its subscribers for his subscription, unless and until said company has first made an assessment or call upon such subscriber therefor. And so your orator is advised and respectfully submits, that allowing said deed to have full legal validity everywhere, and allowing said trustees to proceed without impediment to collect all debts due the company collectable by them, it is manifest that the provisions of said deed of trust are wholly inadequate to provide for the payment of the debts of said company, many of whose creditors your orator charges are in very needy circumstances, and all of whom have waited nearly five years for the satisfaction of their just demands.

And your orator further charges that even if said company were now to levy an additional assessment upon its stockholders, it is doubtful whether the right to sue for and collect such assessment would rest in said trustees under said deed, and in attempting to collect the same, said trustees would meet with this additional em-ba-rassment, besides those which they allege have attended their efforts to collect the calls already made and unpaid at the date of said deed, and which were intended to be conveyed to them by said deed.

And your orator further charges that if it be held that any new call were to be made by said company would not pass to said trustees, and they would not for any reason be entitled to collect the amount thereof, but that the amount of such calls would be due the said company by the stockholders, it would lead to ruinous and disastrous consequences, inasmuch as the creditors of said company would endeavor to reach the amounts due to said company under such additional call from its solvent stockholders, and much there-

of would be lost in the expenses of litigation, and an equitable and just division thereof among the creditors would be wholly defeated, as your orator further charges, that a large part of the debts of said company are too small to justify the holders of them, who are poor men, in entering upon such a race of diligence.

And your orator further charges that it will be necessary to resort to the residue of said subscriptions in order to provide the requisite means to pay the debts of said company. And he is advised and respectfully submits, that said subscriptions, so far as the same are unpaid, constitute a trust fund for the payment of the debts of said company, and that the same can and ought to be collected and so applied.

And he further represents that inasmuch as the stockholders reside within different jurisdictions, it is impossible for the creditors to make them all defendants in any one court, and compel an equitable contribution from them to raise a fund sufficient to pay the debts of said company.

And he is advised that to proceed against the stockholders who are within the jurisdiction of each court, would increase litigation and would lead to other injurious consequences.

For your orator is advised that should the creditors proceed against the stockholders within the jurisdiction of any one court, they would be entitled to compel said stockholders to contribute to the extent of their unpaid subscriptions, without reference to the contribution that should be made by other stockholders not within said jurisdiction, and would force those so compelled to contribute, to resort to stockholders elsewhere for contributions and indemnity, and thus greatly multiply litigation and expense.

And your orator is advised, and respectfully submits, that in view of the difficulties and embarrassments which are alleged by said trustees to have attended their efforts to collect so much of the debts of said company as was intended to be conveyed to them by said deed of trust, and in view of the further and additional difficulties that would attend any attempt on the part of the said trustees to collect any new call to be made by said company, and in view of the ruinous expense, loss and injustice that would attend an attempt on the part of said company to collect such new call as debts due to itself, and in view of the necessity there is that resort must be had to the subscribers to provide means for paying the debts of said company, and in view of the expense, multiplicity of litigation, and other difficulties that would attend the proceeding of the creditors against said stockholders directly in the different states and jurisdictions in which said stockholders reside, and in view of the unquestionable right of said creditors, in some form, to compel payment from said stockholders, the said creditors are entitled to the interposition of a court of equity for their relief.

And he is advised and respectfully submits that said creditors are entitled to have an account taken of the debts of said company, and of the assets now available for the payment of the same other than the unpaid subscriptions, and that they are entitled to have an ascertainment of the amount of said uncalled for and unpaid subscriptions which will be required to provide means for the payment of the debts of said company in full, and that in ascertaining the amount so required, a proper allowance should be made for probable losses by insolvency of stockholders and otherwise, and for the expenses of collecting the same, and of this proceeding, and to have a decree requiring said company to make a call or assessment upon its stockholders sufficient to provide said necessary amount, and to have the debts created by such call placed in the hands of some person or persons to be appointod by this court, with adequate authority and power to sue for, collect and receive the same, and bring the same into this court to await its further order.

And your orator further charges that before the questions relating to the powers, rights and obligations of said trustees under said deed of trust can be finally decided there is imminent danger that a large part of the said subscriptions to the stock of said company may be lost by the insolvency of the subscribers and other causes.

And he is further advised that he and the other creditors are entitled to have said deed of trust pronounced upon and construed by this court, and to have the powers and duties of the trustees thereunder, and the rights of the creditors ascertained and defined.

And he is advised that, as said company is a Virginia corporation, and as said deed of trust conveys nothing but personal property, whatever force and effect may be given to the same by the law of this state will be respected and enforced in the courts of other states when said deed may be drawn in question, so far as the law of Virginia with reference to said deed may not conflict with the positive law of such other states.

And so your orator is advised and submits that he and the other creditors of said company are entitled to have the judgment of this court as to the validity and scope of said deed of trust under the laws of Virginia.

And your orator further charges that there has not been recently any election of officers by said company, but he is advised that, under its charter and the laws of Virginia, the officers of said company last elected remain such officers until the election and qualification of their successors, and are competent to exercise the power of such officers.

And he is further advised and submits that under the laws of Virginia the corporate franchises of said company and its existence

as a corporation continue in full force and effect until the affairs of said company shall have been fully settled and its debts paid.

And your orator charges that William H. Perot, of Baltimore, is the president of said company, and that the Board of Directors thereof are William Devries and D. J. Foley, of Baltimore; M. G. Harman, of Staunton, Virginia; Jos. R. Anderson, of Richmond; F. P. Zimmerman, of Augusta, Georgia; J. Carter Mowbray, of Washington, D. C.; Wm. H. Webb, of New York city, and Lorenzo Norvell, whose residence is unknown to your orator.

The principal office of said corporation is in the city of Richmond in the State of Virginia.

Forasmuch, therefore, as your orator and the other creditors of said company are without remedy in the premises, save in a court of equity, and to the end that an account may be taken of the debts due by said company, and that said trustees may state what amount, if any, of money or other property they have received for the payment of the debts of said company, and what payments they have made, and what debts and other property or money belonging to said company they now hold under said deed of trust, and that an account may be taken of such available assets of said company as may now be held by said trustees, and of the subscriptions yet unpaid and uncalled for, and of the value thereof, and that the amount necessary to be assessed upon the solvent subscribers of said company in order to provide means for the payment of its debts and of the expenses of collecting and administering the same may be ascertained, and that said Board of Directors of said company may be decreed to levy an assessment or to make a call upon the subscribers for payment of a sufficient amount of their unpaid and uncalled for subscriptions to pay the said debts and all necessary expenses, in case said Board of Directors shall otherwise be unwilling or fail to take such account and to make such call voluntarily.

And that the validity, effect and scope of said deed of trust may be ascertained and pronounced upon by this court, and the powers, duties and rights of the trustees, and of the creditors of said company thereunder, may be ascertained and interpreted, and the execution of said trust, if the same be held valid, be decreed, and that in the meantime a receiver or receivers *ad litem* may be appointed by this court, with power and authority to receive, sue for, and collect and reduce to money all debts, choses in action, and claims now in the hands of said trustees, and to take possession of and sell all property vendible in its nature held by said trustees, and with full power and authority to sue for, receive and collect any moneys that may become due from any stockholders of said company upon any new or additional calls that may be made by said company upon said stockholders, and that said trustees and

said company may be required to execute and deliver to said receiver or receivers, or trustees *ad litem*, any and all assignments, deeds and conveyances as may be necessary to vest such receiver or receivers, or trustees *ad litem*, with legal power and authority to sue for, demand and receive such debts or other property of said company, or that in case the same be necessary, that such receiver or receivers or trustees *ad litem* may be authorized to use the names of said trustees or of said company in prosecuting any suits or actions that may be necessary to compel payment of any debts due said trustees or said company, or to reduce its property to possession, and that such receiver or receivers or trustees *ad litem* may bring into this court to await its final order any and all moneys received or collected by him or them under said decree or order, and that your orator and the other creditors of said company may have such other or further relief as the equity of the case may require and to your Honor may seem meet. May it please your Honor to grant unto your orators the writ of subpœna to the said The National Express and Transportation Company, and to the officers and directors thereof above named, and to the said John Blair Hoge, C. Oliver O'Donnell and John J. Kelly to be directed, commanding them to be and appear in this court, and answer fully in the premises, and show cause, if any they have, why a decree should not be passed as prayed, and your orator have the relief he seeks.

And your orator, as in duty bound, will ever, &c.

MARSHALL & FISHER.
JOHN HOWARD, p. q.

COMPLAINANT'S EXHIBIT, W. W. G., No. 1.

In the Superior Court of Baltimore city, May term, 1870:

W. W. Glenn
vs.
The National Express and Transportation Company.

29th April, 1869, nar., 3 prom. notes, 3 protests, acct. and affit. fd.

Sumd. by service on Wm. H. Perot, president.

8th June, 1869, judgment by default for want of plea and affidavit.

24th June, 1870, judgment by default extended for $42,501.31 damages assessed by the court, with int. from 24th June, 1870, and costs.

Order of court fd.

Plaintiff's costs, $8.65; defendant's costs, $5.30.

STATE OF MARYLAND—*Baltimore City, set:*

I hereby certify that the aforegoing is a true short copy of the judgment in the above entitled cause, taken from the record of the proceedings of the superior court of Baltimore city. And I hereby further certify, that said record contains no proceeding or entry to show that the judgment aforesaid has been satisfied either in whole or in part.

In testimony whereof, I hereto set my hand and affix the seal of the said court, this 23d day of October, A. D. 1871.

[L. S.] GEORGE ROBINSON,
Clerk of the superior court of Baltimore city.

COMPLAINANT'S EXHIBIT, W. W. G., No. 2.

This deed, made the 20th day of September, A. D. 1866, between the "National Express and Transportation Company," a body politic and corporate under the laws of the state of Virginia, of the first part, and John Blair Hoge, John J. Kelly and C. Oliver O'Donnell, of the second part, witnesseth, that in consideration of the trusts hereinafter declared, and of one dollar paid to the said party of the first part by the said parties of the second part, the party of the first doth hereby grant, bargain, sell, convey, assign, and set over unto the said parties of the second part all the estate, property, rights and credits of the said party of the first part, of every kind and wherever situated in or out of the state of Virginia, including leases, horses, wagons, carts, harness, office furniture, safes, chests, fixtures, and other effects and moneys payable to the company, whether on calls or assessments on stock of the company, or on notes, bills, accounts, or otherwise, which property and moneys are enumerated and set forth in a schedule to be marked A, and annexed hereto, as soon as can be conveniently done, but the omission of any property, money or other thing from such schedule is not to prevent the same from being hereby granted or assigned. But this deed is made on the following trusts, that is to say:

First. That the said parties of the second part, hereinafter called the trustees, shall permit the said party of the first part to remain in the possession and use of all the property herein granted or assigned, except debts, claims and moneys payable, until the first day of November, A. D. 1866, and thereafter, until the trustees shall be requested by one or more of the creditors hereby secured, and whose debt or debts shall then be due, to take possession of such property; but the trustee shall take possession thereof at any time

after the date of this deed, if requested so to do by the Board of Directors of said party of the first part.

Secondly. That the trustees shall proceed without unnecessary delay to collect all the debts, claims and moneys payable which are hereby granted or assigned.

Thirdly. That as soon as the trustees shall be authorized under the foregoing provisions to take possession of the other property hereby granted or assigned, they shall take possession thereof and sell the same at public or private sale in such manner as they shall deem best, for ready money or on reasonable credit with good security.

Fourthly. That the trustees shall have authority to employ, at the expense of this trust, such agents, clerks, counsel, attorneys and servants as they shall deem necessary for the proper execution of the trusts of this deed, and to incur such other reasonable expenses as they shall deem necessary for that purpose.

Fifthly. That out of the moneys which shall arise or come to the possession of the trustees under or by virtue of this deed, they shall pay first the expenses of this trust, including the cost of preparing, stamping and recording this deed, and a commission of five (5) per cent. to the trustees on the money received, and next they shall pay all debts now due, or which shall become due from the said party of the first part, to its officers and employees for their services as such on or before the first day of November next or such previous time as the trustees are required to take possession of all the property hereby granted as aforesaid.

Sixthly. Out of the remainder of such moneys the trustees shall next pay in rateable proportion the two debts which it now owes, one to the Baltimore and Ohio Railroad Company and the other to the Bank of Commerce (of Baltimore), the same being the principal debts due by the said party of the first part, but the precise amounts of which cannot now be exactly stated.

Seventhly. That out of the remainder of such moneys the trustees shall pay all debts of the said party of the first part, for which any officer or director of the company is now liable as indorser or surety for the said party of the first part.

Eighthly. That out of the remainder of such moneys the trustees shall pay in rateable proportion the balance of all debts for which the said party of the first part shall become liable to any railroad companies for transportation of express matter after the date of this deed and on or before the first day of November next, after first applying to said debts the net proceeds according to the said party of the first part from such transportation, such net proceeds being what may remain of the compensation received for such transportation after paying the current expenses of the business, and notwithstanding anything hereinbefore contained, the said

party of the first part shall have a right to receive all tolls and compensations accruing for the transportation of express matter not yet delivered to consignees, or not yet transported, although under existing contracts.

Ninthly. That out of the remainder of the moneys which shall arise and come to the possession of the trustees under this deed, they shall pay (so far as such remainder shall be sufficient) all other debts and liabilities of the said party of the first part now existing in rateable proportion, so far as such debts and liabilities shall be made known to the trustees, within ten months after the date of this deed, or before they shall have distributed any money under this ninth clause.

Tenthly. That any moneys remaining in the hands of the trustees herein named, after satisfying the foregoing trusts, shall be paid to said party of the first part.

In testimony whereof, Joseph E. Johnston, President of the said National Express and Transportation Company, by virtue of authority in him vested by an order and resolution of the Board of Directors of said Company, hath affixed the common seal of said corporation to this deed, as the act and deed of said corporation; and, as evidence thereof, he also subscribes his name hereto the day and year above written.

[L. S.] J. E. JOHNSTON,
President, &c.

CITY OF RICHMOND—*State of Virginia:*

I, Roger J. Page, a notary public for the corporation aforesaid, in the State of Virginia, do certify that Joseph E. Johnston, President of the National Express and Transportation Company, whose name is signed to the writing above, bearing date September 20th, 1866, has acknowledged the same before me in my corporation aforesaid.

Given under my hand this 20th day of September, A. D. 1866.

Signed, ROGER J. PAGE, N. P.
Signed, J. E. JOHNSTON.

City of Richmond, to-wit:

In the office of the court of hustings of the said city the 21st day of September, 1866—

This deed was presented, and with the certificate annexed,

admitted to record at forty-five minutes past six o'clock, P. M.

Teste: RO. HOWARD, Cl'k.

A copy—Teste: BENJ. H. BERRY,
Cl'k Ch'y Ct., Richmond.

I, Samuel M. Evans, clerk of the circuit court of Baltimore city, do certify that the aforegoing is truly copied from the original filed in said cause.

In testimony whereof, I hereunto set my hand and affix the seal of the said court, this 16th day of February, A. D. 1867.

[L. S.] SAMUEL M. EVANS, Clerk.

And the subpœnas having been returned executed on Jos. R. Anderson and M. G. Harman, it was ordered that unless they should appear at the then next rules, and plead, answer or demur to the plaintiff's bill, the same would be taken for confessed as to them, and the matters thereof decreed accordingly; and the cause was continued for directions as to the other defendants.

And at another day, to-wit: At rules held in the clerk's office of the said court, on the last Monday in December, 1879:

The defendants, Jos. R. Anderson and M. G. Harman, still failing to appear, plead, answer or demur to the plaintiff's bill, the bill was taken for confessed, and on motion of the plaintiff's counsel, the cause was set for hearing as to them, and continued for directions as to the other defendants.

And at another day, to-wit: On the 4th day of August, 1879:

Came the plaintiff, by counsel, and filed his amended and supplemental bill; which bill, and the exhibits therewith are in the words and figures following, to-wit:

AMENDED AND SUPPLEMENTAL BILL.

John W. Wright, Sheriff, &c., and adm'r of W. W. Glenn, who sued, &c., vs. The National Express and Transportation Company. } In the chancery court of the city of Richmond.

Richmond, Va.

By way of amendment and supplement to the original bill here-

tofore filed in this honorable court in the above entitled cause by William W. Glenn, now deceased, in behalf of himself and other creditors of the National Express and Transportation Company against the said company and others, John W. Wright, sheriff of the city of Richmond aforesaid, and as such administrator in Virginia of the estate of the said William W. Glenn, dec'd, (the said suit having been revived and ordered to proceed in the name of said Wright, sheriff and administrator as aforesaid), respectfully states and charges that the said judgment mentioned and set forth in said original bill as having been obtained by the said Glenn against the said company, is still unsatisfied, and that neither the said company, nor any of its officers or agents, has made any effort to satisfy or done anything looking to the satisfaction of the same, in whole or in part. On the contrary, alike the said company, its officers and agents, and its trustees, the said John Blair Hoge, J. J. Kelly and C. Oliver O'Donnell, have neglected, failed and refused to take any step towards the satisfaction and payment of said debt. Meanwhile many of the stockholders of said company have become insolvent or bankrupt, and others have departed this life, leaving their estates in confusion; and all of the reasons which originally made it proper for this court to grant the relief prayed for in said bill now exist with greatly increased strength and urgency. Indeed, instead of doing their duty in the premises, the said company and its said trustees have rather set the creditors at defiance than made any effort to pay the corporate debts, and alike by their delay and non-action and by their obstruction of action on the part of the creditors, including the said W. W. Glenn, have seriously imperilled the payment of said debts.

The books of the said company are in the possession of said trustee, John J. Kelly, who was the last superintendent of the company, and he both refuses to submit them to the inspection of the creditors of the company, and to allow copies to be made for their use. But a copy has now been obtained of the list of stockholders, and if the original books cannot be obtained, your complainant is advised that this copy may be used in the case. It will be produced and filed in this cause when needed or required.

The said John Blair Hoge and John J. Kelly, trustees in said deed of trust, are non-residents of this State. Said C. Oliver O'Donnell, who was the other trustee in said deed, is dead, and his estate has been committed to the sheriff of the said city of Richmond, who, by statute in such case made and provided, may, as his personal representative, execute, so far as said O'Donnell is concerned, the trusts of said deed; or this honorable court may appoint another trustee or trustees, if necessary, in the place of the said O'Donnell and of the said John Blair Hoge and John J. Kelly, who refuse or fail to act, and who are out of the jurisdiction of the

court. For your complainant is advised, and insists, that the trusts of said deed, whatever they may be, will not be permitted to fail because either of the absence, non-residence, recusancy, death, or other default or dissability of said trustees, or of any of them, and that if necessary or proper for the protection and realization of the rights of the creditors of said corporation, all of the property and estate of every kind of the said corporation, which has long ceased to exercise its franchises or to do business, will, as a trust fund for the payment of the corporate debts, be directed to be conveyed (by a commissioner appointed for that purpose) either to a new trustee *eo nomine*, or to such receiver or receivers as the court may appoint, who shall be clothed with full powers to collect all the assets of the corporation, and be required to bring the proceeds into court for the satisfaction of the corporate creditors.

And your complainant is further advised and insists, that if upon due requirement thereto the said company should further fail to make such assessment upon its stockholders as may be necessary to pay its corporate debts, it will be within the rightful jurisdiction and province of this honorable court, in furtherance of justice, to order and require such assessment to be made under its direction by one of its master commissioners, or otherwise, and the said assessment to be collected by due legal process and applied to the payment of said debts.

Your complainant is advised that such a course is within the legitimate jurisdiction and established practice of a court of equity, and certainly the circumstances of this case call strongly for the vigorous exercise of all necessary powers of remedial relief.

Said corporation, national in name, but southern in its origin and affinities, set out on its career in the fall of 1865 with the most brilliant and ambitious prospects. By many, perhaps by most, indeed, who subscribed for its stock, it was thought to be a great money-making scheme, and it did not hesitate to incur a large indebtedness in the establishment and carrying on of its business. This, in great part, it was enabled to do by the warm sympathy, good wishes and hearty co-operation of many of the worthiest, most intelligent and patriotic citizens and institutions of the land, from whom it received encouragement and credit in a liberal manner. And such, in fact, was the reality and the promising outlook of its large and prosperous business that, as appears by the said original bill, only a small part of the subscriptions to the capital stock was called for or paid in. But by the most unbusinesslike and culpable negligence and mismanagement, the great and useful enterprise was suffered to fall through in November, 1866, and its numerous friends and creditors—many of them creditors because friends were left in the lurch, and have been permitted to remain so ever since; nay, while the company has, as above stated, itself

done nothing towards the payment of its debts, but the execution of the deed of trust aforesaid, the said trustees in said deed have wholly failed and refused to execute the provisions of said deed, though often requested thereto by the said W. W. Glenn and other creditors of the said company.

Among the claims against the said company it is believed that there are none more meretorious than that of the said Glenn, which is for money paid as endorser for said company and for money lent, &c. Your complainant herewith files a complete transcript of the record in the case of the said Glenn against the said company in the superior court of Baltimore city, in the state of Maryland, in which the said judgment mentioned in the said original bill was obtained, which transcript is marked "R," and is prayed to be taken as part of this amended and supplemental bill. The said judgment, as will be seen by an inspection of said record, was founded upon three several negotiable notes, made by the said company, and endorsed and paid by the said Glenn, after due protest of the same, and an account for money lent, &c., which said notes and account are duly set forth in said transcript, and proof of which said original causes of action will be furnished if required.

In consideration whereof your complainant prays that the said National Express and Transportation Company and the other persons mentioned as parties defendant in said original bill (with the exception of the said M. G. Harman, who is dead,) namely, William H. Perot, of Baltimore, Maryland, president of said company; William Devries and D. J. Foley, of Baltimore, Maryland; Joseph R. Anderson, of Richmond, Virginia; F. P. Zimmerman, of Augusta, Georgia; J. Carter Mowbray, of Washington, D. C.; William H. Webb, of New York, and Lorenzo Norvell, of Lynchburg, Virginia, who are directors of said company. M. B. Poiteaux, of Richmond, Virginia, cashier and treasurer of said company, and John Blair Hoge, of West Virginia, and John J. Kelly, of New York, surviving trustees in said deed of trust in the proceedings mentioned, and, if deemed necessary or proper, John W. Wright, sheriff of the city of Richmond, and as such administrator of said C. Oliver O'Donnell, dec'd, late one of the trustees in said deed, may be made parties defendant to this amended and supplemental bill, the said non-residents of the state of Virginia, by an order of publication duly made, and may be required to answer the same and said original bill; that the said claims of the said W. W. Glenn and other creditors of said company may be established and decreed to be paid; that all of the prayers in said original bill contained may be granted, as if the same were herein repeated; that the said trustees, John Blair Hoge and J. J. Kelly, may be required to deliver up and surrender to this court all of the books of said company of every kind and description that came

into their hands or into the hands of either of them; that the said trustees be removed from office, and if necessary another trustee, or other trustees, may be substituted in their place and stead, and the property and estate embraced in said deed of trust be conveyed to such substituted trustee or trustees, or to such receiver or receivers as may be appointed by the court; that all proper process may issue; that all proper orders and decrees may be made, and that all such other, further and general relief may be granted to your complainant and to the other creditors of the said National Express and Transportation Company as the nature of the case may require and to equity may seem meet, and he will ever pray, &c.

JOHN HOWARD, p. q.

EXHIBIT "R," WITH AMENDED AND SUPPLEMENTAL BILL.

STATE OF MARYLAND—*City of Baltimore—set:*

At a session of the superior court of Baltimore city, in the eighth judicial circuit of the state of Maryland, begun and held at the court-house, in the city of Baltimore, in and for the city aforesaid, on the second Monday of May (being the ninth day of the same month), in the year of our Lord one thousand eight hundred and seventy.

Present: The Honorable George W. Dobbin, associate judge of the supreme bench of Baltimore city, assigned to and presiding in the superior court of Baltimore city.

AUGUSTUS ALBERT, ESQ., Sheriff.
GEORGE ROBINSON, Clerk.

Among other were the following proceedings, to-wit:

William W. Glenn, Plaintiff,

vs.

The National Express and Transportation Company, Defendant.

Be it remembered, that heretofore, to-wit: On the twenty-ninth day of April, in the year of our Lord one thousand eight hundred and sixty-nine, the said *William W. Glenn*, by Charles Marshall and William A. Fisher, Esqrs., his attorneys, prosecuted and sued forth out of the court here the writ of the state of Maryland of summons, directed to the sheriff of Baltimore city in the words and of the tenor following, to-wit:

WRIT OF SUMMONS.

[L. S.] *Baltimore city, to-wit:*

STATE OF MARYLAND: *To the Sheriff of Baltimore city—Greeting:*

You are hereby commanded to summon The National Express and Transportation Company, a body politic and corporate of the state of Virginia, and late holding and exercising franchise in the state of Maryland, of Baltimore city, to appear before the superior court of Baltimore city, to be held at the court-house, in the same city, on the second Monday of May next, to answer an action at the suit of William W. Glenn, and have you then and there this writ.

Witness the Hon'able T. Parkin Scott, chief judge of the supreme bench of Baltimore city, the 11th day of January, 1869.

Issued 29th day of April, 1869.

GEO. ROBINSON, Clerk.

And the said plaintiff, at the same time of bringing his action aforesaid, declared against the said defendant, and at the same time also filed therewith an affidavit with three promissory notes, three protests and account, which declaration, promissory notes, protests, accounts, and affidavits, are in the words, figures, and tenor following, to-wit:

DECLARATION.

In the Superior Court of Baltimore City.

Baltimore city, to-wit:

William W. Glenn, by Marshall and Fisher, his attorneys, sues the National Express and Transportation Company, late a body politic and corporate of the state of Virginia, and late holding and exercising franchises in the state of Maryland:

1. For money payable by the defendant to the plaintiff for goods bargained and sold by the plaintiff to the defendant.
2. Work done and materials provided by the plaintiff for the defendant at its request.
3. Money lent by the plaintiff to the defendant.
4. Money paid by the plaintiff for the defendant at its request.
5. Money received by the defendant for the use of plaintiff.
6. Money found to be due from the defendant to the plaintiff on accounts stated between them.

7. That the defendant on the twenty-eighth day of April, 1866, by its promissory note, now over-due, promised to pay to the plaintiff, or order, $5,000, at the Bank of Commerce, Baltimore, Maryland, four months after date, but did not pay the same.

8. That the defendant by its other promissory note, now over-due, on the ninth day of August, 1866, promised to pay to the order of Benjamin F. Ficklin $10,660.00 without offset, at the Bank of Commerce, in Baltimore, on or before the 6th day of April, 1867, and the said Benjamin F. Ficklin endorsed the same to the plaintiff, but the defendant did not pay the same.

9. That the defendant by its other promissory note now overdue, on the 9th day of August, 1866, promised to pay to the order of Benjamin F. Ficklin $10,843.34, without offset, at the Bank of Commerce in Baltimore, on or before the sixth day of August 1857; and the said Benjamin F. Ficklin endorsed the same to the plaintiff, but the defendant did not pay the same.

And the plaintiff claims $50,000.

MARSHALL & FISHER,
Attorneys for plaintiff.

PROMISSORY NOTES AND PROTESTS.

Richmond, Va., April 28th, 1866.

$50,000.

[United States $5 internal revenue stamp.]

Four months after date we promise to pay to W. W. Glenn or order, without offset, five thousand dollars.

Negotiable and payable at the Bank of Commerce, Baltimore, Md.

Value received.

NATIONAL EXPRESS AND
TRANSPORTATION COMPANY,

By J. E. JOHNSTON, Prest.

Endorsed:

W. W. GLENN.
J. V. H. ALLEN, Treasurer.
H. R. GLENN.
W. W. GLENN.

Baltimore, August 9, 1866.

$10,843.34.

[U. S. S. Int. Rev. conveyance, five dollars and sixty cents.]

On or before the 6th day of August, 1867, the National Express and Transportation Company will pay at the Bank of Commerce in Baltimore to the order of Benjamin F. Ficklin, ten thousand eight hundred and forty-three dollars and 34 cents without offset, for value received.

NATIONAL EXPRESS AND
TRANSPORTATION COMPANY,
By M. G. HARMAN, Vice-President.

Endorsed:

B. F. FICKLIN.
W. W. GLENN.

UNITED STATES OF AMERICA—*State of Maryland, to wit:*

On this day, the ninth of August, in the year of our Lord eighteen hundred and sixty-seven, at the request of Bank of Commerce, Baltimore, Md., bearer of the original promissory note, whereof a true copy is above written, I, Joseph T. Atkinson, notary public, by letters patent, under the great seal of the State of Maryland, commissioned and duly qualified, residing in the city of Baltimore, in the State aforesaid, presented the said promissory note at the Bank of Commerce and demanded payment. Received for answer, "No funds."

[Comptroller's seal.]

Wherefore, I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest, as well against the maker and endorser of the said promissory note, as all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages, and interests suffered and to be suffered for want of payment of the said promissory note.

Thus done and protested, at the city of Baltimore aforesaid; and on the same day I addressed written notices to the endorsers of the said promissory note, informing them that it had not been paid, payment therefor having been demanded and refused, and that they would be held responsible for the payment thereof.

Sent notices to M. G. Harman, V. P. Nat. Ex. & Trans. Co., the maker, and B. F. Ficklin, the first endorser, by depositing them in Baltimore post-office, directed to them at Staunton, Va.

Left notices for W. W. Glenn, the last endorser, and Thomas G. Pratt, receiver, Nat. Ex. & Trans. Co., at their places of business in this city.

In testimony whereof, I have hereunto set my hand and affixed my seal notarial the day and year aforesaid.

[L. S.] JOSEPH T. ATKINSON,
Notary Public.

Protest,	$2 00
U. S. tax,	25
Postage,	6
	$2 31

[United States 25c. Int. Rev. Stamp—Certificate.]

Baltimore, Aug. 9, 1866.

$10,660.

On or before the 6th day of April, 1867, the National Express and Transportation Company will pay at the Bank of Commerce, in Baltimore, to the order of Benjamin F. Ficklin, ten thousand six hundred and sixty dollars, without offset, for value received.

NATIONAL EXPRESS AND
TRANSPORTATION COMPANY,
By M. G. HARMAN, Vice-President.

Endorsed:

B. F. FICKLIN,
W. W. GLENN.

[One $5, one 25c., two 5c. United States Int. Rev. Stamps.]

April 9th, 1867.

Protested for non-payment.

L. WARREN, N. P.

PROTEST.

Baltimore, August 9th, 1866.

$10,660.

On or before the 6th day of April, 1867, the National

Express and Transportation Company will pay at the Bank of Commerce, in Baltimore, to the order of Benjamin F. Ficklin, ten thousand six hundred and sixty dollars, without offset, for value received.

NATIONAL EXPRESS AND
TRANSPORTATION COMPANY,

By M. G. HARMAN, Vice-President.

Endorsed:

B. F. FICKLIN,
W. W. GLENN.

[One $5, one 25c., two 5c. United States Int. Rev. Stamps.]

UNITED STATES OF AMERICA—*State of Maryland, to-wit:*

On this day, the 9th of April, in the year of our Lord eighteen hundred and sixty-seven, at the request of the Bank of Commerce of Baltimore, bearer of the original promissory note, whereof a true copy is above written, I, Leander Warren, notary public by letters patent, under the great seal of the state of Maryland, commissioned and duly qualified, residing in the city of Baltimore, in the state aforesaid, presented the said promissory note at the Bank of Commerce in Baltimore, and demanded payment, was answered, "No funds."

[Comptroller's seal.]

Wherefore, I, the said notary, at the request aforesaid, have protested and by these presents do solemnly protest, as well against the makers and endorsers of the said promissory note as all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages and interests suffered and to be suffered, *and to be suffered*, for want of payment of the said promissory note.

Thus done and protested, at the city of Baltimore aforesaid; and on the same day I addressed written notices to the endorsers of said promissory note, informing them that it had not been paid, payment therefor having been demanded and refused, and that they would be held responsible for the payment thereof. And left notices for the Nat. Ex. and Transportation Company with Thomas G. Pratt, Esq., receiver, and for the last endorser at his place of business. Mailed notices for the first endorser directed to Benj. F. Ficklin, Esq., Richmond, Va., and also mailed notice for M. G. Harman, Esq., Vice-President, directed to him at Staunton, Va., the same day.

In testimony whereof, I have hereunto set my hand an affixed my seal notarial the day and year aforesaid.

[L. S.] LEANDER WARREN,
Notary Public.

Protest,	$2 00
U. S. tax,	25
Postage,	6
	$2 31

[One 25c. U. S. Int. Rev. Stamp.]

Baltimore, Aug. 9th, 1856.

$10,843.34.

On or before the 6th day of August, 1867 the National, Express and Transportation Company will pay at the Bank of Commerce in Baltimore to the order of Benjamin F. Ficklin, ten thousand eight hundred and forty-three dollars and 34 cents without off-set, for value received.

NATIONAL EXPRESS AND
TRANSPORTATION COMPANY,

By M. G. HARMAN, Vice-President.

Endorsed:

B. F. FICKLEN.
W. W. GLENN.

[One $5; one 25c.; two 5c.; five 2c. United States Int. Rev. Stamps.]

Baltimore, August 6th, 1867.

Protested for non-payment.

JOSEPH T. ATKINSON, N. P.

Baltimore, August 6th, 1867.

Prostested for non-payment.

JOS. T. ATKINSON, N. P.

Baltimore, Aug. 9th, 1866.

$10,843.34.

On or before the 6th day of August, 1867, the National Express and Transportation Company will pay at the Bank of Com-

merce in Baltimore to the order of Benjamin F. Ficklin, ten thousand eight hundred and forty-three dollars and thirty-four cents, without offset, for value received.

NATIONAL EXPRESS AND
TRANSPORTATION COMPANY,

By M. G. HARMAN, Vice-President.

Endorsed:

B. F. FICKLIN,
W. W. GLENN.

[1 U. S. Stamp for 5 dollars; 1, 25 cents; 2, 5 cents; 5, 2 cents.]

United States of America,
State of Maryland, to-wit:

On this day, the sixth of August, in the year of our Lord, eighteen hundred and sixty-seven, at the request of the cashier of the Bank of Commerce, bearer of the original promissory note, whereof a true copy is above written, I, Joseph T. Atkinson, notary public, by letters patent, under the great seal of the state of Maryland, commissiond and duly qualified, residing in the city of Baltimore, in the state aforesaid, presented the said promissory note at the Bank of Commerce in this city and demanded payment. Received for answer: "No funds."

[Comptroller's seal.]

Wherefore, I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest, as well against the maker and endorsers of the said promissory note, as all others whom it may concern, for exchange, re-exchange, and all costs charges damages and interests suffered, and to be suffered for want of payment of the said promissory note.

Thus done and protested, at the city of Baltimore aforesaid. And on the same day I addressed written notices to the endorsers of the said promissory note, informing them that it had not been paid, payment therefor having been demanded and refused, and that they would be held responsible for the payment thereof. Sent notice to National Express and Transportation Company by M. G. Harman, Vice-Pres't, maker, and F. Ficklin, first endorser, by depositing the same in the Baltimore post-office, directed to them respectively at Staunton, Va. Left notice for W. W. Glenn, last endorser, at his place of business in this city.

In testimony whereof I have hereunto affixed my seal notarial, the day and year aforesaid.

[L. S.] JOSEPH T. ATKINSON,
Notary Public.

Protest,	$2 00
U. S. tax,	25
Postage,	6
	$2 31

[United States 25c. Int. Rev. stamp.]

ACCOUNT.

National Express and Transportation Company, Dr.,

To W. W. Glenn.

1866.			
June 5	—To paid company as loan,		$5,000 00
	To paid New York Daily News, advertising,		25 20
11	—To paid company as loan,		5,000 00
15	—To paid company as loan,		6,500 00
			$16,525 20
	To interest on 1st payment, $5,000, to 23d Sept., 1867, 1 yr. 3 m. 18 d.,	$390 00	
	To interest on 2d payment, $5,000, to 23d Sept., 1867, 1 yr. 3 m. 12 d.,	385 00	
	To interest on 3d payment, $6,500, to 23d Sept., 1867, 1 yr. 3 m. 8 d.,	496 17	
			1,271 17
			$17,796 37
	Amt. due Sept. 23d, 1867,		
1867.			
Sept. 23	—By rec'd of G. W. Phillips, U. S. Marshal, proceeds sales in Glenn *vs.* N. E. & Tr. Co., Washington attachment,	$3,567 12	
	Less am't paid and retained for horse feed and service rendered by J. Carter Mow-		

	bray, att'y for National E. & Tr. Co.,	354 00	
		$3,213 12	
	By rec'd of company for advertising,	25 20	
			3,238 32
			$14,558 05
	To interest from Sept. 23d, 1867, to Oct. 15, 1867, 22d.,		53 38
			$14,611 43
Oct. 15	—By rec'd of Thos. G. Pratt, receiver, this amount audited account of Glenn *vs.* N. E. & Tr. Co., to claim of W. W. Glenn,	$5,390 77	
	Less sheriff's costs,	204 27	
			5,186 50
	Amount due Oct. 15th, 1867,		$9,424 93
	To interest to April 26th, 1869, 1 yr., 6m., 11 d.,		865 52
	Amount forward,		$10,290 45
	Amount bro't forward,		$10,290 45
1866.			
Aug. 31	—To paid note at Bank Commerce, J. E. Johnston, pres't, N. E. & Tr. Co. for W. W. Glenn, dated Richmond, Va., April 28th, at 4 mo., due Aug. 28–31,	$5,000 00	
	To interest to April 26–29, 2 yr., 7 m., 26 d.,	796 67	
			5,796 67
			$16,087 12
	To am't note of National Express and Transportation Co. by M. G. Harman, vice-president, for Benjamin F. Ficklin, and endorsed by W. W. Glenn, dated Balti-		

more, August 9, 1866, payable on or before April 6, '67, at Bank of Commerce, in Balt'o, and protested for non-payment,	$10,660 00	
To paid protestation note,	2 31	
Interest on am't of note, $10,660, from April 9th, 1867, to April 26th, 1869, 2 yrs., 17 ds.,	1,309 40	
		11,971 71
		$28,058 83
To am't of note of National Express and Trans. Co., by M. G. Harman, vice-president, for Benj. F. Ficklen, and endorsed by W. W. Glenn, dated Baltimore, Aug. 9th, '66, payable on or before Aug. 6, '67, at Bank of Commerce, in Baltimore, and protested for non-payment,	10,843 34	
To paid protest note,	4 62	
To interest on am't of note, $10,843.34, from Aug. 9, '67, to April 26th, 1869, 1 yr., 8 mo., 17 d.,	1,115 05	
		11,963 01
		$40,021 84

AFFIDAVIT.

STATE OF MARYLAND—*City of Baltimore, to-wit:*

I hereby certify that on this twenty-sixth day of April, 1869, before me, the subscriber, a justice of the peace of said state, in and for the city aforesaid, personally appeared William W. Glenn, and made oath on the Holy Evangely of Almighty God, that there is justly due and owing by the National Express and Transportation Company, the defendant within named, to him, the plaintiff in this cause, on the annexed account and notes, the sum of forty thousand and twenty-one dollars and eighty-four cents (including

interest to this 26th day of April, 1869) over and above all discounts, to the best of his knowledge and belief.

GEO. McCAFFRAY, J. P.

A copy of which said declaration was made and sent with the said writ to the sheriff of the city aforesaid thereon endorsed: So served on the defendant with the writ.

At which mentioned second Monday of May, in the year aforesaid, being the day of the return of the foregoing writ, comes into court here the said plaintiff by his attorneys aforesaid, and the sheriff of Baltimore city aforesaid, to-wit: John W. Davis, gentleman, to whom the foregoing writ was in form aforesaid directed, makes return thereof to the court here thus endorsed, to-wit:

"Summoned by service on William H. Perot, President. Copy left.

"JOHN W. DAVIS, Sheriff."

And the said defendant being called, appears in court here by John Stewart and J. Blair Hoge, Esqrs., its attorneys.

And thereupon, in pursuance of the statute in such case made and provided, further day is given to the said defendant at any time before the second Monday in June next to file a plea, etc., or judgment by default will be rendered against it.

The same day is given to the said plaintiff then and there, &c.

At which said second Monday of June, in the year aforesaid, came into court here the said plaintiff by his attorneys aforesaid.

And the said defendant comes not, but makes default.

Therefore it is considered by the court here that the said plaintiff recover against the said defendant.

But because it is unknown to the court here what damages the said plaintiff hath sustained, a day is given to the said parties before the court here, on the second Monday in September next, to inquire of and assess the damages which the said plaintiff hath sustained by reason of the premises.

At which said second Monday of September, in the year aforesaid, come into court here the said plaintiff by his attorneys aforesaid, but the said defendant comes not.

And because it is still unknown to the court here what damages the said plaintiff hath sustained, a further day is given to the said parties, before the court here on the second Monday of January next, to inquire of and assess the damages which the said plaintiff hath sustained by reason of the premises.

At which said second Monday of January, in the year of our Lord eighteen hundred and seventy, come again into court here the said plaintiff by his attorneys aforesaid, but the defendant comes not.

And because it is still unknown to the court here what damages the said plaintiff hath sustained, a further day is given to the said parties, before the court here on the second Monday in May next, to inquire of and assess the damages which the said plaintiff hath sustained by reason of the premises.

And now at this day—to-wit: the said second Monday of May, in the year last aforesaid, come again into court here the said plaintiff by his attorneys aforesaid.

But the defendant comes not.

Thereupon the said plaintiff, by his attorneys aforesaid, prays that the court assess his damages.

Whereupon the court here assess the damages of the said plaintiff on account of the premises and file in said cause the following order—to-wit:

ORDER OF COURT.

Filed 24th June, 1870.

W. W. Glenn
vs.
National Express and Transportation Co. } In the superior court of Baltimore city.

Judgment by default, June 8, 1869.

Upon legal and satisfactory proof of the correctness and amount of the claim for which the above suit was brought, being produced to the court, it is ordered, this twenty-fourth day of June, 1870, that the judgment, by default in this cause, be extended for $42,531 dollars 31 cents, damages assessed by the court.

GEORGE W. DOBBIN.

Therefore it is considered by the court here, that the said plaintiff recover against the said defendant as well the sum of forty-two thousand five hundred and thirty-one dollars and thirty-one cents, with interest from the twenty-fourth day of June, eighteen hundred and seventy, as the sum of eight dollars and sixty-five cents, for his cost and charges by him about his suit in this behalf laid out and expended. And the said defendant in mercy, &c. And the said plaintiff have thereof his execution, &c.

MEMORANDUM.

Final judgment was rendered in this case on the 24th June, 1870, for the plaintiff for $42,531.31, the damages assessed by the court, with interest from the 24th day of June, 1870, and costs.

Costs, $8.65.

STATE OF MARYLAND—*City of Baltimore, sct:*

I, Francis A. Prevost, clerk of the superior court of Baltimore city, do hereby certify that the aforegoing is a full, true, and entire transcript, taken from the record and preceedings of the said court in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of the superior court of Baltimore city aforesaid, on this first day of July, eighteen hundred and seventy-nine.

[Seal.] F. A. PREVOST, Clerk.

Maryland, sct:

I, George W. Dobbin, associate judge of the supreme bench of Baltimore city, assigned to and presiding in the superior court of Baltimore city, and the eighth judicial circuit of said state, do certify that the foregoing attestation of Francis A. Prevost, clerk of the said superior court of Baltimore city, is in due form and by the proper officer.

Given under my hand at the city of Baltimore, this first day of July, in the year one thousand eight hundred and seventy-nine.

GEORGE W. DOBBIN.

STATE OF MARYLAND—*City of Baltimore, sct:*

I, Francis A. Prevost, clerk of the superior court of Baltimore city, do hereby certify, that the Honorable George W. Dobbin, who has certified and signed the above attestation, was, at the time of so doing, presiding judge of the superior court of Baltimore city, in the eighth judicial circuit of the state of Maryland, duly commissioned and qualified; and that to all acts done by him in that capacity, full faith and credit are due and ought to be given, and that his signature thereto is genuine.

In testimony whereof, I hereunto subscribe my name, and affix

the seal of the superior court of Baltimore city, on this first day of July, A. D. eighteen hundred and seventy-nine.

[Seal.] FRANCIS A. PREVOST,
Clerk of the superior court of Baltimore city.

And thereupon subpœnas in chancery were issued against the defendants, directed to the sheriffss of the cities of Richmond and Lynchburg, returnable to 1st September rules; which subpœnas and the returns of the sheriffs thereon are in the words and figures following to-wit:

SUBPŒNAS.

THE COMMONWEALTH OF VIRGINIA,

To the sheriff of the city of Richmond, greeting:

We command you, that you summon the National Express and Transportaion Company, W. H. Perot, William Devries, D. J. Foley, Joseph R. Anderson, F. P. Zimmerman, J. Carter Mowbray, William H. Webb, Lorenzo Norvell, and M. B. Poiteaux and John Blair Hoge and John J. Kelly, trustees, to appear at the clerk's office of the court of chancery of the city of Richmond, at the rules to be held for the said court on the first Monday in September, 1879, to answer an original, amended and supplemental bill in chancery, exhibited against them in our said court, by John W. Wright, sheriff of the city of Richmond, and as such administrator of W. W. Glenn, deceased, who sues on behalf of himself and such other creditors of the National Express and Transportation Company.

And have then there this writ.

Witness, Benjamin H. Berry, clerk of our said court at the court-house, the 5th day of August, 1879, and in the 103d year of our foundation.

BENJ. H. BERRY.

RETURNS.

Executed Aug. 8, 1879, by delivering to Joseph R. Anderson and M. B. Poiteaux each a copy of the within.

L. P. WINSTON, D. S., for
JNO. W. WRIGHT, S. C. R.

Executed in the city of Richmond, Aug. 8, 1879, as to the Na-

tional Express and Transportation Company, by delivering to Jos. R. Anderson, a director, and M. B. Poiteaux, cashier of the said company, each a copy of the within *spa.* in chancery, each of whom is resident of said city of Richmond; the president not being a resident of the city of Richmond. The other defendants are no inhabitants.

L. P. WINSTON, D. S., for
JNO. W. WRIGHT, S. C. R.

THE COMMONWEALTH OF VIRGINIA,
To the Sheriff of the City of Lynchburg—Greeting:

We command you that you summon Lorenzo Norvell to appear at the clerk's office of the court of chancery of the city of Richmond, at the rules to be held for the said court on the first Monday in September, 1879, to answer original and amended and supplemental bill in chancery, exhibited against him and others in our said court by John W. Wright, sheriff of the city of Richmond, and as such administrator of W. W. Glenn, deceased, who sues on behalf of himself and such other creditors of the National Express and Transportation Company; and have then there this writ.

Witness, Benjamin H. Berry, clerk of our said court, at the courthouse, the 5th day of August, 1879, and in the 103d year of our foundation.

BENJ. H. BERRY.

RETURN.

Executed August 6th, 1879, on Lorenzo Norvell, by delivering to him a true copy of the within summons.

M. J. DAY, D. S., for
JNO. W. WRIGHT, S. C. R.

And affidavit having been made and filed that the defendants, Wm. H. Perot, William Devries, D. J. Foley, F. P. Zimmerman, J. Carter Mowbray, William H. Webb, John Blair Hoge, and John J. Kelly are non-residents of the state of Virginia, it is ordered that they appear here within one month after due publication hereof, and do what is necessary to protect their interests herein.

And at another day, to-wit: At rules held in the clerk's office of the said court on the first Monday in September, 1879—

Came the defendant, M. B. Poitiaux, by counsel, and filed his answer to the plaintiff's bill, to which answer the plaintiff replied

generally, and the same is in the words and figures following, to-wit:

ANSWER OF M. B. POITIAUX.

TO THE HON. E. H. FITZHUGH,
Judge of the Chancery Court of the City of Richmond:

The answer of M. B. Poitiaux, one of the defendants in a suit now before your honor, John W. Wright, sheriff of the city of Richmond, and as such administrator of W. W. Glenn, deceased, who sues, &c., &c., against The National Express and Transportation Company, W. H. Perot, M. B. Poitiaux, and other defendants.

For answer, your respondent would say, that he was the cashier of the first division of the said National Express and Transportation Company, his office being in the city of Richmond at the time of the conveyance executed by the said National Express Company to John J. Kelly, John Blair Hoge, and Columbus O. O'Donnell, trustees That he had been cashier as aforesaid for some four or five months previously; that the said first division comprised the states of Virginia, North Carolina, part of South Carolina, and Bristol, Tennessee; that the said National Express and Transportation Company is in debt to your respondent as of the 31st day of January, 1867, in the sum of three hundred dollars, for arrearages of his salary due and unpaid; and in the further sum of twenty-seven dollars and twenty-five cents, for monies advanced by him to pay sundry petty expenses in the office of the company, and which have never been refunded to him; that he has no books and papers in his possession belonging to the said Express and Transportation Company; that he does not know anything about the transactions of the said trustees, nor in whose possession the books and papers now are, or what has become of them; that he is not now, nor ever was, a stockholder in the said National Express and Transportation Company. And, having fully answered, prays to be hence dismissed, &c.

M. B. POITIAUX.

STATE OF VIRGINIA—*City of Richmond, to-wit:*

This day personally appeared before me, J. L. Williams, a notary public in and for the city aforesaid, M. B. Poitiaux, and made oath, in due form of law, that the statements made in the foregoing answer are true.

Given under my hand this 30th day of August, 1879.

J. L. WILLIAMS,
Notary Public.

And the subpœnas having been returned executed on Joseph R. Anderson, M. B. Poitiaux, The National Express and Transportation Company, and Lorenzo Norvell, and these defendants, except M. B. Poitiaux, failing to appear, it was ordered that unless they should appear at the then next rules and plead, answer or demur to the plaintiff's bills the same would be taken for confessed as to them and the matters thereof decreed accordingly. And the cause was continued for proof of the publication and posting of the order heretofore made in this cause, as to the non-resident defendants.

And at another day—to-wit: At rules held in the clerk's office of the said court on the last Monday in September, 1879:

The defendants, Joseph R. Anderson, The National Express and Transortation Company, and Lorenzo Norvell, still failing to appear, plead, answer, or demur to the plaintiff's original and amended and supplemental bills, the same were taken for confessed, and, on motion of the plaintiff by connsel, the cause was set for hearing as to them and M. B. Poitiaux. And the cause was continued for proof of publication and posting of the order heretofore made, as to the non-resident defendants.

And at another day—to-wit: In the clerk's office of the said court, on the 6th day of October, 1879:

Proof of the publication and posting of the order made herein on the 4th day of August, 1879, and also of the subpœna in chancery issued herein on the 5th day of August, 1879, having been filed, on motion of the plaintiff's counsel the cause was set for hearing as to all the defendants.

THE COMMONWEALTH OF VIRGINIA,

To the Sheriff of the City of Richmond, Greeting:

We command you that you summon the National Express and Transportation Company, Wm. H. Perot, William Devries, D. J. Foley, Joseph R. Anderson, F. P. Zimmerman, J. Carter Mowbray, William H. Webb, Lorenzo Norvell and M. B. Portiaux, John Blair Hoge and John J. Kelly, trustees, to appear at the Clerk's office of the Court of Chancery of the city of Richmond, at the rules to be held for the said Court on the first Monday in September, 1879, to answer original, amended and supplemental Bill in Chancery, exhibited against them in our said Court by John W. Wright, Sheriff of the City of Richmond, and as such administrator of W. W. Glenn, deceased, who sues on behalf of himself and such other creditors of the National Express and Transportation Company.

And have then there this writ. Witness, Benjamin H. Berry, Clerk of our said Court, at the Courthouse, the 5th day of August, 1879, and in the 103d year of our foundation.

BENJ. H. BERRY.

A copy—Teste,

BENJ. H. BERRY, Clerk.

In the Clerk's office of the Chancery Court of the city of Richmond, the 29th day of September, 1879, John A. Meanley this day made oath before me that he did, on the first day of September, 1879, that being the first day of the September term of the Hustings Court of said city, post a copy of the annexed order of publication at the front door of the new City Hall, in which said Hustings Court holds its sessions.

J. T. POINDEXTER, Dep. Clerk.

I hereby certify that the summons hereto attached of Berry, Clerk of Court, in suit of Wright vs. National Transportation Co. and others, was published in "The State" newspaper once a week for four weeks, the first insertion being on the 5th day of August, 1879.

JNO. HAMPDEN CHAMBERLAYNE, Ed'r, &c.
CHAMBERLAYNE & BEIRNE, Ed'rs and Prop'rs.

VIRGINIA—In the Clerk's office of the Chancery court of the city of Richmond, August 5, 1879, in vacation:

John W. Wright, Sheriff of the city of Richmond, and as such administrator of W. W. Glenn, deceased, who sues on behalf of himself and other creditors of the National Express and Transportation Company, Plaintiffs,

against

The National Express and Transportation Company, W. H. Perot, William Devries, D. J. Foley, Joseph R. Anderson, F. P. Zimmerman, J. Carter Mowbray, William H. Webb, Lorenzo Norvell, M. B. Portiaux, John Blair Hoge and John J. Kelly, trustees, Defendants.

In chancery, on original, amended and supplemental bill.

The object of this suit is to obtain a construction and enforcement of the deed of trust, in the proceedings mentioned, from the National Express and Transportation Company to the defendants, John Blair Hoge and John J. Kelly and another; to remove said Hoge and Kelly as trustees in said deed, and to subject all of the property, estate and rights of every kind of said Company to the

payment of the debts of the plaintiff and other creditors of said Company, and in furtherance thereof to appoint a receiver or receivers with due powers to collect and make available such property, estate and rights. And affidavit having been made and filed that the defendants, Wm. H. Perot, William Devries, D. J. Foley, F. P. Zimmerman, J. Carter Mowbray, William H. Webb, John Blair Hoge and John J. Kelly, are non-residents of the State of Virginia, it is ordered that they appear here within one month after due publication hereof, and do what is necessary to protect their interests herein.

A copy—Teste,

BENJ. H. BERRY, Clerk.

JOHN HOWARD, p. q.

I hereby certify that the notice hereto attached of Benj. H. Berry, clerk, John Howard, p. q., in suit of Wright, adm'r, vs. The National Express and Transportation Co. and others, was published in "The State" newspaper once a week for four weeks, the first insertion being on the 6th day of August, 1879.

RICHARD F. BEIRNE, Editor, &c.,
for CHAMBERLAYNE & BEIRNE,
Owners and Editors of "The State."

In the clerk's office of the Chancery court of the city of Richmond, the 29th day of September, 1879, John A. Meanley this day made oath before me that he did on the 1st day of September, 1879, that being the first day of the September term of the Hustings court of said city, post a copy of the annexed order of publication at the front door of the new City Hall, in which said Hustings court holds its session.

J. T. POINDEXTER, Dep. Clerk.

And at the same day—to-wit: At a Chancery Court of the city of Richmond, continued by adjournment and held for said city on the 6th day of October, 1879:

John W. Wright, sheriff of the city of Richmond, and as such administrator of W. W. Glenn, deceased, who sues on behalf of himself and other creditors of the National Express and Transportation Co., Plaintiff,

against

The National Express and Transportation Co., W. H. Perot, Wm. Devries, D. J. Foley, Jos. R. Anderson, F. P. Zimmerman, J. Carter Mowbray, W. H. Webb, Lorenzo Norvell, M. B. Poitiaux, John Blair Hoge, and John J. Kelly, trustees, Defendants.

This day this cause came on to be heard upon the original and amended bills taken for confessed as to all of the defendants, except M. B. Poitiaux and Joseph R. Anderson, upon the several answers of the said Poitiaux and Anderson (that of the said Anderson being this day filed by leave of court) with replications thereto, and exhibits filed, and was argued by counsel:

On consideration whereof, it is adjudged, ordered and decreed, that one of the commissioners of this court do inquire and report:

1. An account of the debts due by the said defendant, the National Express and Transportation Company, and the priorities thereof, if any.

2. An account of the assets of said defendant company.

And such commissioner is directed to report specially any matters deemed pertinent by him or which he may be required to state by any of the parties.

Any party to the cause may be examined before such commissioner, and all or any books, papers and documents of the said defendant company in the possession of any party may be called for and required to be produced.

And it is further ordered that notice of the time and place of taking the said accounts be published once a week for four successive weeks in the *State* newspaper published in the city of Richmond, and that such publication shall be equivalent to personal service of such notice on the parties to this cause.

The answer of Joseph R. Anderson referred to in foregoing decree is in the words and figures following, to-wit:

ANSWER OF JOS. R. ANDERSON.

TO THE HON. EDWARD H. FITZHUGH,

Judge of the Chancery Court of the city of Richmond:

The separate answer of Joseph R. Anderson, one of the defendants to an original, amended and supplemental bill of complaint exhibited against him and others in the Chancery Court of the city of Richmond by John W. Wright, sheriff of the said city, and as such administrator in Virginia of W. W. Glenn, dec'd, complainant.

This respondent, reserving to himself the benefit of all just exceptions to the said original, amended and supplemental bill, for answer thereto, or to so much thereof as he is advised that it is material he should answer, answer and says: that he does not admit that he is a director in the National Express and Transportation Company, but that to the best of his knowledge and belief he resigned the directorship of the company very soon after his elec-

tion thereto; that moreover he does not remember ever having acted in the capacity of director of the said company at a single one of its meetings. And he prays to be hence dismissed with his reasonable costs by him in this behalf expended, and he will ever pray, &c.

JOSEPH R. ANDERSON,
Defendant.
JAMES ALFRED JONES,
J. F. T. ANDERSON, p. d.

VIRGINIA—*City of Richmond, to-wit:*

This day personally appeared before me, Tazewell Ellett, a notary public for the city and State aforesaid, Joseph R. Anderson, whose answer is above written, and made oath that the statements contained in the said answer are true.

Given under my hand this 6th day of October, in the year 1879.

TAZEWELL ELLETT, N. P.

And at another day—to-wit: At a Chancery Court of the city of Richmond, continued by adjournment and held for the said city, on the 6th day of November, 1879:

John W. Wright, sheriff of the city of Richmond, and as such adm'r of W. W. Glenn, dec'd, who sues on behalf of himself and other creditors of the National Express and Transportation Company, Plaintiff,
against
The National Express and Transportation Co. and others, Defendants.

This day came the Baltimore and Ohio Railroad Company, by John Howard, its attorney, and by leave of court filed its petition praying to be made a party co-plaintiff in the above entitled suit, upon the terms of sharing the costs and benefits of the same; and thereupon it is considered and ordered that the said Baltimore and Ohio railroad be, and it is hereby, made a party co-plaintiff in the said suit, and placed upon an equal footing as the original plaintiff therein; and it is further ordered that the claims of the said railroad company be referred for inquiry and report to O. G. Kean, Esq., the master or commissioner having in charge the execution of the decree of this court of the 7th day of October, 1879, directing an inquiry to be made of the debts and assets of the said defendant, The National Express and Transportation Company.

The petition of the Baltimore and Ohio Railroad Co., referred

to in foregoing decree, is in the words and figures following, to-wit:

PETITION OF BALT. & OHIO R. R. Co.

W. W. Glenn's adm'r, who sues, &c., vs. The National Express and Transportation Company and others,	In the Chancery Court of the city of Richmond.

The petition of the Baltimore and Ohio Railroad Company, a company chartered by the State of Maryland, respectfully states that it is a creditor of the defendant, The National Express and Transportation Company, in the above entitled suit in two accounts, one for the sum of twenty-four hundred and seventy-four dollars and forty-six cents ($2,474.46), with interest at the rate of seven per cent. per annum from the 1st day of March, 1866, till paid, and the other for the sum of forty-one thousand four hundred and thirty-two dollars and thirty-eight cents ($41,432.38), with like interest from the 1st day of January, 1867, until paid. Copies of which said accounts, marked respectively B. & O. R. R., No. 1, and B. & O. R. R., No. 2, are herewith presented and prayed to be taken and considered as parts of this petition, being accounts of transportation of freight, &c., by your petitioner over its road for the said defendant company.

Your petitioner is informed that the above entitled suit is a creditor's bill, filed against the said defendant company for the benefit of the plaintiff and such other creditors of the said defendant as may come in and pay a proportionate part of the costs and share the benefits of said suit, and that an account has been ordered by this honorable court, to be taken before one of its masters or commissioners in chancery, of the debts and assets of said defendant company.

Your petitioner respectfully prays that it may be made a party plaintiff in said suit, and be placed upon an equal footing with the plaintiff upon the usual terms of sharing the costs and benefits of the suit, which your petitioner is willing to do; that its said claims may be established and paid; that they may be referred to the said master or commissioner for examination, proof and report; and that all such other further and general relief may be granted to your petitioner as the nature of its case may require, and to equity may seem meet; and it will ever pray, &c.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
By JOHN HOWARD, its attorney.

Nov. 6th, 1879.

JOHN HOWARD, p. q.

And at another day—to-wit: At a chancery court of the city of Richmond, continued by adjournment and held for said city on the 15th day of November, 1879,—

John W. Wright, sheriff of the city of Richmond, and as such adm'r of W. W. Glenn, dec'd, who sues on behalf of himself and other creditors of the National Express and Transportation Co., Plaintiff,
against
The National Express and Transportation Company and others, Defendants.

This day came the Bank of Commerce of Baltimore, by John Howard, its attorney, and by leave of court filed its petition praying to be made a party plaintiff in the above entitled suit, upon the terms of sharing the costs and benefits of the same; and thereupon it is considered and ordered that the Bank of Commerce of Baltimore be and it is hereby made a party co-plaintiff in the said suit and be placed upon an equal footing as the original plaintiff therein; and it is further ordered that the said claim of the said Bank of Commerce of Baltimore be referred for inquiry and report to O. G. Kean, Esq., the commissioner having in charge the execution of the decree of this court of the 7th day of October, 1879, directing an inquiry to be made of the debts and assets of the said defendant, the National Express and Transportation Company.

The petition of the Bank of Commerce of Baltimore referred to in foregoing decree is in the words and figures following, to-wit:

PETITION OF BANK OF COMMERCE.

W. W. Glenn's adm'r, who sues, &c.,
vs.
The National Express and Transportation Company and others. } In the chancery court of the city of Richmond.

The petition of the Bank of Commerce of Baltimore respectfully states that it is a creditor of the defendant, The National Express and Transportation Company, in the above entitled suit in the sum of sventeen thousand seven hundred and fifty-five dollars and seventy cents ($17,625.70), with average interest thereon at the rate of seven per cent. per annum from the 4th day of July, 1868, until paid. An account of the items of which is presented herewith, marked B. C. B., and prayed to be taken as part of this petition, being a balance for money lent and advanced to the said defendant company by your petitioner.

Your petitioner is informed that the above entitled suit is a creditor's bill filed against the said defendant company for the benefit of the plaintiff and such other creditors of the said company as may come in and pay a proportionate part of the costs and share the benefits of said suit, and that an account has been ordered by this honorable court to be taken before one of its masters or commissioners of the debts and assets of the said defendant company.

Your petitioner respectfully prays that it may be made a party plaintiff in said suit and be placed upon an equal footing with the plaintiff upon the usual terms of sharing the costs and benefits of the suit, which your petitioner is willing to do; that its said claim may be established and paid, that it may be referred to the said commissioner for examination, proof and report; and that all such other, further and general relief may be granted to your petitioner as the nature of its case may require, and to equity may seem meet, and it will ever pray, &c.

THE BANK OF COMMERCE OF BALTIMORE,
By JOHN HOWARD, its attorney.

Nov. 14, 1879.

JOHN HOWARD, p. q.

And at the same day—to-wit: At a chancery court of the city of Richmond, continued by adjournment and held for said city on the 15th day of November, 1879,—

John W. Wright, sheriff of the city of Richmond, and as such adm'r. of W. W. Glenn, dec'd., who sues on behalf of himself and the other creditors of The National Express and Transportation Company, Plaintiff,

against

The National Express and Transportation Co. and others, Defendants.

This day came the Philadephia, *Delaware* and Baltimore Railroad Company, by John Howard, its attorney, and by leave of court filed its petition praying to be made a party co-plaintiff in the above entitled suit upon the terms of sharing the costs and benefits of the same; and thereupon it is considered and ordered that the said Philadelphia, Delaware and Baltimore Railroad Company be and it is hereby made a party co-plaintiff in the said suit, and placed upon an equal footing with the original plaintiff therein; and it is further ordered that the said claim of the Philadelphia, Delaware and Baltimore Railroad Company be referred to O. G. Keen, Esq., the commissioner having in charge the execution of the decree of this court of the 7th day of October, 1879, direct-

ing an inquiry to be made of the debts and assets of the said defendant, The National Express and Transportation Company.

The petition of the Philadelphia, Wilmington and Baltimore Railroad Co., referred to in the foregoing decree, is in the words and figures following, to-wit:

PETITION OF THE P., W. & B. R. R. Co.

W. W. Glenn's adm'r, who sues, &c., vs. The National Express and Transportation Company and others. } In the Chancery Court of the city of Richmond.

The petition of the Philadelphia, Wilmington and Baltimore Railroad Company respectfully states and charges that it was and is a corporation duly "organized under the laws of the State of Maryland; that it was and is a creditor of the said The National Express and Transportation Company for the following described acceptances, to-wit: one dated the 14th day of September, 1866, at one day's sight, payable to the order of H. F. Kenny, an officer of said Philadelphia, Wilmington & Baltimore Railroad Company, for the sum of nineteen hundred and one dollars and sixty cents, protested for non-payment on the 21st day of September, 1866; another dated the 21st day of September, 1866, at one day's sight, payable to the order of said Kenny, for sixteen hundred and forty-three dollars and twenty cents, protested for non-payment on the 28th day of September, 1866; another dated the 29th day of September, 1866, at one day's sight, payable to the order of said Kenny, for fifteen hundred and ninety-seven dollars and sixty cents, protested for non-payment on the 6th day of October, 1866; another dated the 13th day of October, 1866, at one day's sight, payable to the order of said Kenney, for seventeen hundred and sixty-nine dollars and sixty cents, protested for non-payment on the 23d day of October, 1866, together with costs of protest of said acceptances, to-wit: nine dollars and twenty-five cents, with interest on the amount of each acceptance as aforesaid from the respective dates at which they matured.

Your petitioner is informed that the above entitled suit is a creditor's bill filed against the said defendant company for the benefit of the plaintiff and such other creditors of the said defendant as may come in and pay a proportionate part of the costs and share the benefits of said suit, and that an account has been ordered by this honorable court, to be taken before one of its masters or commissioners in chancery, of the debts and assets of said defendant company.

Your petitioner respectfully prays that it may be made a party plaintiff in said suit, and be placed upon an equal footing with the

plaintiff upon the usual terms of sharing the costs and benefits of the suit, which your petitioner is willing to do; that its said claim may be established and paid; that it may be referred to the said commissioner for examination, proof and report, and that all such other further and general relief may be granted to your petitioner as the nature of its case may require, and to equity may seem meet; and your petitioner will ever pray, &c.

THE PHILADELPHIA, WILMINGTON AND
BALTIMORE RAILROAD COMPANY,
By JOHN HOWARD, its Attorney.

Nov. 14th, 1879.

JOHN HOWARD, p. q.

And at another day, to-wit: on the 19th day of June, 1880, a report of Commissioner Otho G. Kean was filed in the cause, and the same and the depositions and exhibits filed therewith are in the words and figures following, to-wit:

REPORT OF COM'R KEAN.

Comm'r's Office, 1113 Main Street,
Richmond, June 19, 1880.

Glenn's adm'r
v.
The National Express & Transportation Company. } In Richmond chancery court.

TO THE HON. ED. H. FITZHUGH,
Judge of said Court:

By decree of this court, entered in the above styled cause October 6, 1879, it was "adjudged, ordered and decreed that one of the commissioners of this court do inquire and report—

1. An account of the debts due by the said defendant, the National Express and Transportation Company, and the priorities thereof, if any.

"2. An Account of the assets of said defendant company.

"And such commissioner is directed to report specially any matters deemed pertinent by him, or which he may be required to state by any of the parties." And said decree also provided that such inquiry and report should only be made after the commissioner to whom the cause might go had notified all parties in interest, by publication once a week for four successive weeks in some newspaper published in Richmond, of the time and place fixed on by him for execution of said decree of October 6, 1879.

Counsel for complainant having requested me to act in the cause, I inserted a notice in the *State*, a newspaper published in Richmond, informing all persons interested in The National Express and Transportation Company, whether as creditors or otherwise, that I had fixed on Saturday, November, 8, 1879, at ten o'clock A. M., as the time, and my office, in Richmond, as the place for executing the said decree of October 6th, 1879. A copy of this notice, evidenced as the law requires, is hereto annexed.

On the appointed day John Howard, Esq., counsel for complainant, appeared before me, and at his instance the taking of depositions was commenced and continued, with regular adjournments, from time to time until concluded on May 7, 1880. During this period I took the deposition of quite a number of witnesses, many of whom were formerly officers and employees of the company, received and filed a vast number of exhibits, and also had before me many of the books of the defendant company. These depositions and exhibits are herewith returned; the books are not filed with my report because their custodian, Mr. John J. Kelly, of New York, did not feel authorized to part with them. In his testimony, however, and from inspection and examination of the books themselves, I have secured, I think, all that they contain pertinent to this matter. These despositions, books and exhibits—the latter comprising open accounts, notes, bills of exchange, and judgments, evidencing debts due by the defendant company—these papers and documents, I say, constituting all the evidence produced before me, I now beg to present the following report in response to the decree of October 6, 1879:

1st. That the account herewith returned, marked No. 1, contains an accurate statement of the debts and demands alleged and proved before me against the defendant, the National Express & Transportation Company; that the aggregate indebtedness, as shown by said account, is $509,392.41, distributed under two classes, the first of which foots up $104,911.40; the second, $404,-481.01—and that while creditors standing in the same class are to be paid ratably *inter sese*, those standing in the first class are to be paid in full before those in the second receive anything. This discrimination is made by the defendant company itself, as will be seen on reference to the deed by which it conveyed all its assets in trust for benefit of creditors. By the provisions of that deed the Bank of Commerce of Baltimore. and the Baltimore & Ohio R. R. Co., are constituted preferred creditors.

2nd. That the assets of the defendant company consist exclusively of what may be raised by assessments on its stockholders.

3rd. And by way of special matter: That the annexed account or statement, marked No. 2, shows in condensed* form the num-

*Taken from stock-book of Co.

ber of shares of stock held in the National Express and Transportation Company, where they are held, the par value of such stock, the par value of the same less 20 per cent. heretofore assessed, and which has either been paid in or irrevocably lost, and finally an estimate of the assessment which will be necessary to pay the debts asserted in this suit, together with the expenses of collecting such assessment.

Respectfully submitted,

OTHO G. KEAN, Comm'r.

Comr's fee, $100.

Note.—I was requested by counsel to give an estimate of the probable expenses of collecting the assessment on the stock of the def't co. But on reflection think it better that the amount should be fixed by the court, when the assessment made on account of creditors can easily be enlarged so as to include that on account of costs, &c.

O. G. K., Comm'r.

STATEMENT No. 1.

Class 1.

1866.			
Oct. 31	—Due Baltimore and Ohio R. R. Co.,	41,432 38	
	Less credit—See exhibit "B. & O. R. R.,"	141 75	
	Balance due,	41,290 63	
	Interest thereon from Oct. 31, 1866, to June 1, 1880, 13 years and 7 months, at 6 per cent.,	33,651 86	
1880.			
June 1	—Total principal and interest due to date,	74,942 49	74,942 49
1868.			
July 4	—Due Bank of Commerce (Baltimore),	17,479 68	
	Interest thereon from July 4,		

1868, to June 1, 1880, 11 years 10 months 27 days,	12,489 23	
Total principal and interest due to date,	29,968 91	
		29,968 91
		104,911 40

1870.

June 24—Due William W. Glenn,	42,531 31	
Costs,	8 65	
Interest on $42,531.31 from June 24, 1870, to June 1, 1880, 9 years 11 months 6 days,	25,348 66	

1880.

June 1—Total principal and interest to date,	67,888 62	
		67,888 62

Memo. by com'r. The debt of W. W. Glenn's adm'r, though appearing on this page, does not belong to Class 1, but to Class 2, in which it is estimated and included

O. G. KEAN, Com'r.

Class 2.

1867.

March 11—Due Francis Murray for the use of John R. Terry,	13,683 67	
Costs,	648 49	
Interest on $13,683.67 from March 11, 1867, to June 1, 1880, 13 years 2 months 20 days,	10,855 70	

1880.

June 1—Total principal and interest due to date,	25,187 86	
		25,187 86

1867.

March 11—Due Henry M. Bach, trustee, &c.,	84,838 83	
Interest thereon from March		

	11, 1867, to June 1, 1880, 13 years 2 months 20 days,	67,305 47	
	Total principal and interest due to date,	152,144 30	152,144 30
1879.			
Sept. 19—	Due Luke H. Miller,	3,748 83	
	Costs,	42 15	
	Interest on $3,748.83 from Sept. 19, 1879, to June 1, 1880, 8 months and 12 days,	157 45	
1880.			
June 1—	Total principal and interest due to date,	3,948 43	3,948 43
1867.			
March 23—	Due Fulton & Walker,	527 36	
	Costs,	9 87	
	Interest on $527.36 from March 23, 1867, to June 1, 1880, 13 years 2 mos. 7 days,	417 23	
1880.			
June 1—	Total principal and interest due to date,	954 46	954 46
1866.			
April 2—	Due Robert Higgins,	1,733 50	
	Less this sum paid him by sheriff Ohio Co., W. Va.,	836 92	
	Balance due,	896 58	
	Costs,	37 75	
	Interest on $896.58 from April 2, 1866, to June 1, 1880, 14 years 2 months,	762 09	
1880.			
June 1—	Total principal and interest due to date,	1,696 42	1,696 42
1866.			
Sept. 1—	Due George McMaster,	731 93	
	Interest thereon from Sept. 1,		

	1866, to June 1, 1880—13 years, 9 months,	603 84	
1880.			
June 1	—Total principal and interest due to date,	1,335 77	
			1,335 77
	Carried forward,		185,267 24
	Bro't forward,		185,267 24
1867.			
March 9	—Due Pennsylvania Company for insurance on lives and granting annuities, trustee under the will of Sarah B. Vansyckel,	1,280 00	
	Costs,	14 87	
	Interest on $1,280.00 from March 9, 1867, to June 1, 1880—13 years, 2 mos., 22 day,	1,015 69	
1880.			
June 1	—Total principal and interest due to date,	2,310 56	
			2,310 56
1866.			
Nov. 16	—Due Gardner T. Getty,	151 33	
	Less this sum received on account,	85 30	
	Balance due,	66 03	
	Costs,	45 45	
	Interest on $66.03 from Nov. 16, 1866, to June 1, 1880—13 years, 6 mos., 15 days,	53 65	
1880.			
June 1	—Total principal and interest due to date,	165 13	
			165 13
1866.			
Dec. 4	—Due Arthur Shaff,	168 28	
	Costs,	20 75	
	Interest on $168.28 from Dec. 4		

	4, 1866, to June 1, 1880—13 years, 5 mos., 27 days,	136 23	
1880. June 1	—Total principal and interest due this day,	325 25	325 25
1867. Jan'y 31	—Due M. B. Poitiaux,	300 00	
	Interest thereon from Jan'y 31, 1867, to June 1, 1880—13 years, 4 mos.,	240 00	
1880. June 1	—Total principal and interest due this day,	540 00	540 00
1867. Jan'y 15	—Due J. P. McCorkle,	250 00	
	Interest thereon from Jan'y 15, 1867, to June 1, 1880—13 years, 4½ months,	200 62	
1880. June 1	—Total principal and interest due this day,	450 62	450 62
1868. Sept. 13	—Due Philadelphia, Wilmington & Baltimore R. R. Co.,	7,736 74	
	Interest on $6,921.25 (principal of above sum) from Sept. 13, 1868, to June 1, 1880—11 years., 8 mos., 18 days,	4,865 63	
1880. June 1	—Total principal and interest due this day,	12,602 37	12,602 37
	Carried forward,		201,661 17
	Brought forward,		201,661 17
1867. March 1	—Due John J. Kelly,	2,383 47	
	Interest thereon from March		

	1, 1867, to June 1, 1880—13 years, 3 months,	1,894 85	
1880.			
June 1	—Total prin'l and interest due to date,	4,278 32	4,278 32
1866.			
Nov'r 15	—Due Louis Stix & Co.,	500 00	
	Interest thereon from Nov'r, 1866, to June 1, 1880—13 years, 6 months, 15 days,	406 25	
1880.			
June 1	—Total prin'l and interest due to date,	906 25	906 25
1880.			
June 1	—Burton W. Harrison, am't due him this date, all principal,		2,850 00
1866.			
Sept. 1	—Due Wilmington & Weldon R. R. Co.,	970 73	
	Interest thereon from Sept. 1 1866, to June 1, 1880, 13 years, 9 months,	800 85	
1880.			
June 1	—Total principal and interest due to date,	1,771 58	1,771 58
1866.			
Oct. 1	—Due Rich'd, Fred. & Poto. R. R. Co.,	5,353 24	
	Interest thereon from Oct. 1, 1866, to June 1, 1880, 13 years, 8 months,	4,389 65	
1880.			
June 1	—Total principal and interest due this day,	9,742 89	9,742 89
1866.			
Oct. 1	—Due Seaboard & R. R. R. Co.,	597 88	
	Interest thereon from Oct. 1,		

	1866 to June 1, 1880, 13 years, 8 months,	490 26	
1880.			
June 1	—Total principal and interest due to date,	1,088 14	1,088 14
1866.			
Oct. 1	—Potomac Ferry Co.,	290 87	
	Interest thereon from Oct. 1, 1866, to June 1, 1880, 13 years, 8 months,	238 51	
1880.			
June 1	—To principal and interest due to date,	529 38	529 38
	Carried forward,		222,827 73
	Brought forward,		222,827 73
1866.			
Dec. 1	—Due North Eastern R. R. Co.,	812 27	
	Interest thereon from Dec. 1, 1866, to June 1, 1880, 13 years, 6 months,	657 94	
1880.			
June 1	—Total principal and interest due this day,	1,470 21	1,470 21
		3,295 10	
1866.			
Dec'r 1	—Due S. C. Railroad Company,	938 60	4,233 70
	Interest thereon from Dec. 1, 1866, to June 1, 1880, 13 years, 6 months,		3,449 30
1880.			
June 1	—Total principal and interest, due this day,	7,683 00	7,683 00
1866.			
Oct'r 1	—Due the Charlotte, Columbia & Augusta Railroad Com-		

	pany to the Charlotte and South Carolina Railroad Co.,	881 27	
	Interest thereon from Oct. 1, 1866, to June 1, 1880, 13 years, 8 months,	722 64	
1880.			
June 1	—Total principal and interest due this day,	1,603 91	1,603 91
1866.			
Nov'r 1	—Due Baltimore Steam Packet Co.,	347 76	
	Interest thereon from Nov'r 1, 1866, to June 1, 1880, 13 years, 7 months,	283 42	
1880.			
June 1	—Total principal and interest due this day,	631 18	631 18
1866.			
Aug'st 1	—Due L. R. Smoot,	770 00	
	Interest thereon from Aug. 1, 1866, to June 1, 1880, 13 years, 10 months,	639 10	
1880.			
Jan'y 1	—Total principal and interest due this day,	1,409 10	1,409 10
1867.			
Jan'y 1	—Due J. T. M. Barnes,	356 66	
	Interest thereon from Jan'y 1, 1867, to June 1, 1880, 13 years, 5 months,	287 11	
1880.			
June 1	—Total principal and interest due this day,	643 77	643 77
	Carried forward,		236,268 90

	Brought forward,		236,268 90
1866.			
Nov'r 1	—Due Gen. Jos. E. Johnston,	2,477 75	
	Interest thereon from Nov. 1, 1866, to June 1, 1880, 13 years, 7 months,	2,019 36	
1880.			
June 1	—Total principal and interest due this day,	4,497 11	4,497 11
1866.			
Dec'r 4	—Due Richard T. Allison,	167 50	
	Costs,	18 05	
	Interest on $167.50 from Dec. 4, 1866, to June 1, 1880, 13 years, 5 mos., 27 days,	135 56	
1880.			
June 1	—Total principal and interest due this day,	321 11	321 11
1866.			
Dec'r 1	—Orange and Alexandria Railroad Co.,	3,144 70	
	Costs,	7 60	
	Interest on $3,144.70 from Dec'r 1, 1866, to June 1, 1880, 13 years, 6 mos.,	254 72	
1880.			
June 1	—Total principal and interest due this day,	3,407 02	3,407 02
1867.			
Jan'y 1	—Franklin Harrison,	137 50	
	Costs,	22 60	
	Interest on $137.50 from Jan. 1, 1867, to June 1, 1880, 13 years, 5 months,	110 69	
1880.			
June 1	—Total principal and interest due this day,	270 79	270 79

1866.			
Oct'r 20—Andrew J. Joyce & Co.,		90 76	
Costs,		39 90	
Interest on $90.76 from Oct. 20, 1866, to June 1, 1880, 13 years, 7 mos.,		73 97	
1880.			
June 1—Total principal and interest due this day,		204 63	
			204 63
Carried forward,			244,969 56
Brought forward,			244,969 56
1866.			
Sept. 20—John D. Imboden,		1,456 56	
Costs,		7 82	
Interest on $1,456.56 from 20 Sept., 1866, to Jan. 1, 1867, 3 mo., 11 days,		24 85	
1867.			
Jan'y 1—Balance,		1,489 23	
1—Cr. by payment,		565 09	
Balance,		924 14	
Interest on balance from Jan. 1, 1867, to Feb'y 1, 1867, 1 month,		4 62	
Balance,		728 76	
Feb'y 1—Cr. by payment,		534 96	
Balance,		393 80	
Interest from Feb. 1, 1867, to May 1, 1867, 3 mos.,		5 90	
Balance,		399 70	
May 1—Cr. by payment,		233 70	
Balance,		166 00	
Interest from May 1, 1867, to June 1, 1880, 13 years, 1 month,		129 89	

1880.			
June 1—Total principal and interest due to date,		295 89	
			295 89
1866.			
Sept. 20—Ould & Carrington,		2,000 00	
Costs,		7 82	
Interest from 20 Sept., 1866, on $2,000.00 to Jan'y 1, 1867,		33 33	
Balance,		2,041 15	
Cr. by payment,		775 17	
Balance,		1,265 98	
Interest on balance from Jan. 1, 1867, to June 1, 1880, 13 years, 5 months,		1,022 11	
1880.			
June 1—Total principal and interest due to date,		2,288 09	
			2,288 09
Carried forward,			247,553 54
Brought forward,			247,553 54
1866.			
Sept. 20—John B. Baldwin		2,000 00	
Costs,		7 82	
Interest from 20 Sept., 1866, to Jan'y 1, 1867, 3 mos. 10 days		33 33	
Balance,		2,041 15	
1867.			
Jan'y 1—Cr. by payment,	251 18		
Cr. by payment,	775 17		
		1,026 35	
Balance,		1,014 80	
Interest on balance from Jan'y 1, 1867, to June 1, 1880, 13 years 5 months,		794 76	
1880.			
June 1—Total principal and interest due to date,		1,809 56	
			1,809 56

1866.				
Sept. 20—	Page & Maury,		2,400 00	
	Costs,		7 82	
	Interest from Sept. 20, 1866, to Jan'y 1, 1867, on $2,400, 3 mos. 11 days,		40 00	
	Balance.		2,447 82	
1867.				
Jan'y 1—	Cr. by payment,	300 69		
	Cr. by payment,	929 79		
			1,230 48	
	Balance,		$1,218 34	
	Interest on balance from 1, Jan'y, 1867, to Jan'y 17, 1877,		3 45	
	Balance,		$1,220 79	
Jan'y 17—	Cr. by payment,		158 83	
	Balance,		1,061 96	
	Interest on balance from Jan'y 17, 1867, to June 1, 1880, 13 years 4 mos. 14 days,		853 04	
1880.				
June 1—	Total principal and interest due to date,		1,915 09	
				1,915 09
				251,278 10
June 1—	Due William W. Glenn, prin'l, int. and costs to date and brought here from Class, 1, in which it improperly appears,			67,888 62
	Total principal and interest to date, Brought forward,			319,166 72
1867.				
June 1—	Due S. D. Childs,		75 00	
	Interest thereon to June 1, 1880, 13 years.			
June 1—	Due John Biddle,		50 00	
	Interest thereon to June 1, 1880, 13 years.			
June 1—	Due "National Intelligencer,"		124 19	

	Interest thereon to June 1, 1880, 13 years.		
June	1—Due E. R. Cunningham,	12	75
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due H. P. Gilbert & Co.,	12	00
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due publisher of "Chronicle,"	259	88
	Interest thereon to June 1, 1880, 13 years.		
	Due John Farrell,	19	48
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due J. W. Naim & Bro.,	65	21
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due Thos. Ware & Thos. Kelly,	33	00
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due Palmer & Sly,	42	50
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due Jas S. Tapham & Co.,	29	32
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due R. P. Buford,	20	23
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due Oscar T. Keeler,	1,242	34
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due M. W. Hutcheson,	350	00
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due T. Titcomb,	7	25
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due Henry St. Paul & Co.,	25	00
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due James Conning,	5	00
	Interest thereon to June 1, 1880, 13 years.		
			2,373 15

		Brought forward,	2,373 15
1867.			
June	1—Due Edward Shloss, Interest thereon to June 1, 1880, 13 years.	229 87	
June	1—Due Pitty & Sawyer, Interest thereon to June 1, 1880, 13 years.	640 00	
June	1—"Mobile Daily Tribune," Interest thereon to June 1, 1880, 13 years.	31 00	
June	1—Due "Adventure & Register," Interest thereon to June 1, 1880, 13 years.	187 50	
June	1—Due Young & Woods, Interest thereon to June 1, 1880, 13 years.	2,000 00	
June	1—Due Charles W. Field, Interest thereon to June 1, 1880, 13 years.	366 00	
June	1—Due Sims & Hamilton, Interest thereon to June 1, 1880, 13 years.	33 00	
June	1—Due F. E. Marks, Interest thereon to June 1, 1880, 13 years.	214 40	
June	1—Due R. A Jeffrey, Interest thereon to June 1, 1880, 13 years.	28 00	
June	1—Due Floyd McCulloch, Interest thereon to June 1, 1880, 13 years,	58 33	
June	1—Due C. M. McMullin, Interest thereon to June 1, 1880, 13 years.	5 57	
June	1—Due Berger & Hoffman, Interest thereon to June 1, 1880, 13 years.	8 65	
June	1—Due S. Downey, Interest thereon to June 1, 1880, 13 years.	91 33	
June	1—Due S. E. Leps, Interest thereon to June 1, 1880, 13 years.	40 50	
June	1—Due James D. P. Fenton, Interest thereon to June 1, 1880, 13 years.	100 00	

June	1—Due S. E. Poor, Interest thereon to June 1, 1880, 13 years.	80 00	
June	1—Due Sperdth & Indeinden, Interest thereon to June 1, 1880, 13 years.	14 50	
June	1—Due J. C. Orr & Co., Interest thereon to June 1, 1880, 13 years.	6 05	
June	1—Due Walters & Kruft, Interest thereon to June 1, 1880, 13 years.	12 00	
			6,529 85
1867.			
June	1—Due J. H. Logan & Co., Interest thereon to June, 1, 1880, 13 years.	1 00	
June	1—Due Bushfield, Wallace & Co., Interest thereon to June 1, 1880, 13 years.	1 10	
June	1—Due J. W. Houck, Interest thereon to June 1, 1880, 13 years.	39 00	
June	1—Due Hamilton & Nagle, Interest thereon to June 1, 1880, 13 years.	2 00	
June	1—Due Wheeling Intelligencer, Interest thereon to June 1, 1880, 13 years.	41 65	
June	1—Due Wheeling Register, Interest thereon to June 1, 1880, 13 years.	35 00	
June	1—Due John G. Justice, Interest thereon to June 1, 1880, 13 years.	130 00	
June	1—Due Thos. K. Davis, Interest thereon to June 1, 1880, 13 years.	92 94	
June	1—Due J. Reynolds, Interest thereon to June 1, 1880, 13 years.	45 00	
June	1—Due D. S. Ryan, Interest thereon to June 1, 1880, 13 years.	61 00	
June	1—Due Atlantic & N. C. R. R. Co.,	525 67	

	Interest thereon to June 1, 1880, 13 years.		
June	1—Due Raleigh & Gaston R. R. Co.,	1,195 33	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due C. W. Starbuck & Co.,	30 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due Fitch & Bro.,	17 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due D. McFarland,	10 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due J. W. Newman,	6 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due E. Raine,	2 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due Brown & Davis,	19 15	
	Interest thereon to June 1, 1870, 13 years.		
June	1—Due Sam'l Blair & Co.,	26 60	
	Interest thereon to June 1, 1880, 13 years.		
		———	8,810 28
1867.			
June	1—Due F. E. Suire & Co.,	13 82	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due C. B. Prather & Co.,	10 75	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due Maguire & Co.,	6 20	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due Anderson & McFarland,	11 91	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due Wm. Huddart & Co.,	3 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due J. B. Shroder,	3 75	
	Interest thereon to June 1, 1880, 13 years.		

June	1—Due H. G. Strobel,	5 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Western Union Telegraph Co.,	150 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due John M. Owen,	8 50	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due Smith, Hawley & Co.,	35 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due J. Black,	16 67	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due Capatnus Shaffer,	6 25	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due R. B. Smith,	40 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due Peter Hoffman,	9 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due J. Taylor,	10 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due P. Doherty,	20 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due John Taylor,	10 00	
	Interest thereon to June 1, 1880, 13 years.		
			9,170 14
1867.			
June	1—Due John Dean,	22 50	
	Interest thereon to June 1, 1880, 13 years.		
June	1 Due C. D. B. Webster,	83 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due W. H. Glenn,	75 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due. E. Winchester,	69 34	

	Interest thereon to June 1, 1880, 13 years.		
June	1—Due J. J. Graham,	80 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due J. L. Hawk,	47 83	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due R. C. Kinkead,	110 80	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due Sherman Bailey,	35 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due Earhart Bumans,	40 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due John Murphy,	20 83	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due F. W. Winchester,	25 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due William Grimes,	40 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due E. Shaffer,	50 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due G. H. Swift,	15 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due H. M. Cottingham,	585 66	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due J. H. McDade,	100 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due F. A. B. Jennings,	56 66	
	Interest thereon to June 1, 1880, 13 years.		
			10,626 76
1867.			
June	1—Due R. W. Atwell,	75 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due P. S. Johnson,	108 33	

	Interest thereon to June 1, 1880, 13 years.	
June	1—Due R. M. Demere,	95 00
	Interest thereon to June 1, 1880, 13 years.	
June	1—Due H. C. Grubb,	131 65
	Interest thereon to June 1, 1880, 13 years.	
June	1—Due Hunter & Gammell,	384 88
	Interest thereon to June 1, 1880, 13 years.	
June	1—Due A. H. Coutes,	30 00
	Interest thereon to June 1, 1880, 13 years.	
June	1—Due J. H. Nicholas,	90 62
	Interest thereon to June 1, 1880, 13 years.	
June	1—Due C. M. Davis,	6 70
	Interest thereon to June 1, 1880, 13 years.	
June	1—Due J. T. Jenkens & Co.,	16 60
	Interest thereon to June 1, 1880, 13 years.	
June	1—Due C. W. & W. R. J. Long, & Billups,	59 41
	Interest thereon to June 1, 1880, 13 years.	
June	1—Due J. J. Ford,	52 00
	Interest thereon to June 1, 1880, 13 years.	
June	1—Due Ogletree & Grubbs,	52 75
	Interest thereon to June 1, 1880, 13 years.	
June	1—Due S. S. Herman,	67 35
	Interest thereon to June 1, 1880, 13 years.	
June	1—Due J. A. Witherspoon,	66 90
	Interest thereon to June 1, 1880, 13 years.	
June	1—Due the Town of Athens, Ga.,	22 00
	Interest thereon to June 1, 1880, 13 years.	
June	1—Due Mrs. C. A. Johnson,	315 00
	Interest thereon to June 1, 1880, 13 years.	
June	1—Due E. R. Hodgson & Bro.,	23 00

	Interest thereon to June 1, 1880, 13 years.		
June	1—Due Nicholson, Moss & Hutcheson,	75 00	
	Interest thereon to June 1, 1880, 13 years.		
June	1—Due James Bond,	135 00	
	Interest thereon to June 1, 1880, 13 years.		
		———	$12,433 95
		$12,433 95	
June	1—Due Stockton & Co.,	96 87	
	Interest to June 1, 1880, 13 years.		
June	1—Due F. Arnold & Co.,	130 75	
	Interest to June 1, 1880, 13 years.		
June	1—Due G. A. Mercer,	25 00	
	Interest to June 1, 1880, 13 years.		
June	1—Due Roswell King,	100 15	
	Interest to June 1, 1880, 13 years.		
June	1—Due Alabama & Florida R. R. Co.,	214 34	
	Interest to June 1, 1880, 13 years.		
June	1—Due Mobile & Great Northern R. R. Co.,	155 82	
	Interest to June 1, 1880, 13 years.		
June	1—Due Selma & Meridian R. R. Co.,	174 89	
	Interest to June 1, 1880, 13 years.		
June	1—Due W. M. Keblinger,	95 50	
	Interest to June 1, 1880, 13 years.		
June	1—Due W. J. Keblinger,	100 00	
	Interest to June 1, 1880, 13 years.		
June	1—Due J. L. Brode,	134 15	
	Interest to June 1, 1880, 13 years.		
June	1—Due Edwin W. Wade,	37 66	

	Interest to June 1, 1880, 13 years.		
June	1—Due J. J. Terrill,	291 00	
	Interest to June 1, 1880, 13 years.		
June	1—Due J. B. Rhea,	40 91	
	Interest to June 1, 1880, 13 years.		
June	1—Margaret W. Day,	274 98	
	Interest to June 1, 1880, 13 years.		
June	1—Richmond & Danville R. R. Co.,	4,823 81	
	Interest to June 1, 1880, 13 years		
June	1—Va. Central R. R. Company,	1,968 43	
	Interest to June 1, 1880, 13 years.		
June	1—Richmond & Petersburg R. R. Co.,	351 19	
	Interest to June 1, 1880, 13 years.		
June	1—Petersburg R. R. Co.,	406 82	
	Interest to June 1, 1880, 13 years.		
		———	21,856 25
1867.			
June	1—"Richmond Dispatch,"	169 08	
	Interest to June 1, 1880, 13 years.		
	"Richmond Times,"	75 00	
	Interest to June 1, 1880, 13 years.		
	"Richmond Inquirer,"	121 00	
	Interest to June 1, 1880, 13 years.		
	"Va. Free Press,"	20 00	
	Interest to June 1, 1880, 13 years.		
	"Winchester Times,"	12 00	
	Interest to June 1, 1880, 13 years.		
	"Winchester News,"	10 00	
	Interest to June 1, 1880, 13 years.		
	L. H. Fitch,	36 95	

	Interest to June 1, 1880, 13 years.		
	E. W. Anderson,	50 00	
	Interest to June 1, 1880, 13 years.		
	State of Virginia. Taxes,	516 72	
	Interest to June, 1880, 13 years.		
	City of Richmond. Taxes,	1,000 00	
	Interest to June 1, 1880, 13 years.		
June	1—Warwick & Barksdale,	54 50	
	Interest to June 1, 1880, 13 years.		
June	1—H. K. Douglas,	10 00	
	Interest to June 1, 1880, 13 years.		
June	1—D. T. Richards,	50 00	
	Interest to June 1, 1880, 13 years.		
June	1—J. B. Taylor,	5 00	
	Interest to June 1, 1880, 13 years.		
June	1—Merrin & Simpkins,	10 00	
	Interest to June 1, 1880, 13 years.		
June	1—L. A. Elliott,	94 50	
	Interest to June 1, 1880, 13 years.		
			24,091 00
1867.			
June	1—Benton H. Martin,	116 75	
	Interest to June 1, 1880, 13 years.		
June	1—N. W. Belcher & Co.,	200 00	
	Interest to June 1, 1880, 13 years.		
June	1—Stephen Lane,	255 00	
	Interest to June 1, 1880, 13 years.		
June	1—H. Danford,	9 00	
	Interest to June 1, 1880, 13 years.		
June	1—Abernathy & Co.,	92 37	
	Interest to June 1, 1880, 13 years.		
June	1—E. & H. T. Anderson & Co.,	355 41	

	Interest to June 1, 1880, 13 years.		
June	1—Thomas Chalmers, Interest to June 1, 1880, 13 years.	122 50	
June	1—A. M. Hays & Co., Interest to June 1, 1880, 13 years.	35 00	
June	1—T. Franks & Co., Interest to June 1, 1880, 13 years.	123 50	
June	1—Gordon & Slater, Interest to June 1, 1880, 13 years.	9 75	
June	1—Richardson & Co., Interest to June 1, 1880, 13 years.	23 76	
June	1—Joseph Schneider, Interest to June 1, 1880, 13 years.	50 00	
June	1—R. Ibbotson Pres., &c.,, Interest to June 1, 1880, 13 years.	191 11	
June	1—D. Appleton & Co., Interest to June 1, 1880, 13 years.	57 79	
June	1—J. H. Foote, Interest to June 1, 1880, 13 years.	100 00	
June	1— E. J. Houseman, Interest to June 1, 1880, 13 years.	14 50	
June	1—W. S. Walker, Interest to June 1, 1880, 13 years.	75 00	
			25,922 44
1867.			
June	1—R. Hendricks, Interest to June 1, 1880, 13 years.	250 00	
June	1—M. G. Farrh, Interest to June 1, 1880 13 years.	129 00	
June	1—A. Cudworth, Interest to June 1, 1880, 13 years.	76 26	

June	1—S. D. Easterly, Interest to June 1, 1880, 13 years.	93 75	
June	1—W. S. Depaussure, Interest to June 1, 1880, 13 years.	300 00	
June	1—Hiram Harris, Interest to June 1, 1880, 13 years.	393 75	
June	1—Cameron, Barclay & Co., Interest to June 1, 1880, 13 years.	37 50	
June	1—Caustens & Jacobs, Interest to June 1, 1880, 13 years.	17 50	
June	1—Geo. D. Ladd & Co., Interest to June 1, 1880, 13 years.	80 00	
June	1—Sawner & Fergusson, Interest to June 1, 1880, 13 years.	83 50	
June	1—C. D. Franke, Interest to June 1, 1880, 13 years.	6 25	
June	1—Wm. Brookbank, Interest to June 1, 1880, 13 years.	63 90	
June	1—Evans & Cogswell, Interest to June 1, 1880, 13 years.	300 00	
June	1—Benj. M. Junes, Interest to June 1, 1880, 13 years.	22 50	
June	1—S. P. Wiltbank, Interest to June 1, 1880, 13 years.	595 90	
June	1—C. J. Wiltbank, Interest to June 1, 1880, 13 years.	285 50	
June	1—Wm. Wyman, Interest to June 1, 1880, 13 years.	135 25	
June	1—T. Dougherty, Interest to June 1, 1880, 13 years.	127 25	
		28,920 25	
			28,920 25

1867.

June 1	—Thos. P. Bacon, Interest to June 1, 1880, 13 years.	240 85
June 1	—Wm. C. Ford, Interest to June 1, 1880, 13 years.	90 10
June 1	—A. T. Lavallette, Interest to June 1, 1880, 13 years.	14 00
June 1	—C. C. Thompson, Interest to June 1, 1880, 13 years.	60 00
June 1	—David Bulst, Interest to June 1, 1880, 13 years.	60 00
June 1	—H. D. Basler, Interest to June 1, 1880, 13 years.	21 55
June 1	—Benj. Flood, Interest to June 1, 1880, 13 years.	17 58
June 1	—Edward Beans, Interest to June 1, 1880, 13 years.	38 32
June 1	—H. Montgomery, Interest to June 1, 1880, 13 years.	12 02
June 1	—B. W. Oakman, Interest to June 1, 1880, 13 years.	25 55
June 1	—John H. Maxwell, Interest to June 1, 1880, 13 years.	9 50
June 1	—James Millman, Interest to June 1, 1880, 13 years.	10 52
June 1	—Fred. Nagle, Interest to June 1, 1880, 13 years.	20 30
June 1	—Oglesby & Hoge, Interest to June 1, 1880, 13 years.	76 68
June 1	—James M. Cooper, Interest to June 1, 1880, 13 years.	49 25
June 1	—McCaudless & Smith,	15 00

	Interest to June 1, 1880, 13 years.		
June	1—Tucker & Sapman, Interest to June 1, 1880, 13 years.	647 59	
June	1—Weinstein & Bro., Interest to June 1, 1880, 13 years.	24 00	
June	1—McCall & Monteith, Interest to June 1, 1880, 13 years.	29 68	
			30,382 74
1867.			
June	1—Fulton & Wilkes, Interest to June 1, 1880, 13 years.	61 01	
June	1—Philip L. Justice, Interest to June 1, 1880, 13 years.	90 80	
June	1—Andrew Johann & Co., Interest to June 1, 1880, 13 years.	6 06	
June	1—C. L. Cadwallader, Interest to June 1, 1880, 13 years.	132 75	
June	1—Warner & Co., Interest to June 1, 1880, 13 years.	39 90	
June	1—E. Kelterhaus, Interest to June 1, 1880, 13 years.	28 00	
June	1—James J. Martin, Interest to June 1, 1880, 13 years.	282 25	
June	1—William Mann, Interest to June 1, 1880, 13 years.	41 00	
June	1—R. McClure, Interest to June 1, 1880, 13 years.	50 00	
June	1—James B. Smith & Co., Interest to June 1, 1880, 13 years.	166 44	
June	1—H. B. & A. Taylor, Interest to June 1, 1880, 13 years.	100 00	
June	1—Tryon, Bros. & Co.,	259 18	

	Interest to June 1, 1880, 13 years.			
June	1—S. Bonaffon, Interest to June 1, 1880, 13 years.		279 30	
June	1—Powers & Weightman, Interest to June 1, 1880, 13 years.		132 50	
June	1—Boughman, Thomas & Co., Interest to June 1, 1880, 13 years.		12 25	
June	1—Thomas B. Eaton & Co., Interest to June 1, 1880, 13 years.		2 85	
June	1—A. A. Laws, Interest to June 1, 1880, 13 years.		35 00	
				32,102 03
1867.				
June	1—F. A. Goddard, Interest to June 1, 1880, 13 years.		27 93	
June	1—Dickerson & Robelen, Interest to June 1, 1880, 13 years.		51 00	
June	1—W. A. Wisdom, Interest to June 1, 1880, 13 years.		4 50	
June	1—Underwood & Connor, Interest to June 1, 1880, 13 years.		15 00	
June	1—J. P. Smith, Interest to June 1, 1880, 13 years.		18 00	
June	1—Wm. McCauley, Interest to June 1, 1880, 13 years.		25 00	
June	1—Williamson & Co., Interest to June 1, 1880, 13 years.		180 19	
June	1—Louis Green, Interest to June 1, 1880, 13 years.		80 00	
June	1—C. H. & M. House, Interest to June 1, 1880, 13 years.		90 00	
June	1—Hollingsworth Warfield,		5,171 36	

		Interest to June 1, 1880, 13 years.		
June	1	—Baltimore Gas Light Co., Interest to June 1, 1880, 13 years.	115 46	
June	1	—Herman Born, Interest to June 1, 1880, 13 years.	32 25	
June	1	—Adam Kahler, Interest to June 1, 1880, 13 years.	91 85	
June	1	—Gibson & Kirk, Interest to June 1, 1880, 13 years.	36 40	
June	1	—"Baltimore Sun," Interest to June 1, 1880, 13 years.	28 25	
June	1	—Henry Roth, Interest to June 1, 1880, 13 years.	23 35	
June	1	—Bibb & Co., Interest to June 1, 1880, 13 years.	2 00	
			38,094 57	38,094 57
1867.				
June	1	—Fred'k Oelmann, Interest to June 1, 1880, 13 years.	14 66	
June	1	—L. Green, Interest to June 1, 1880, 13 years.	112 20	
June	1	—Caulfield, Bros. & Co., Interest to June 1, 1880, 13 years.	373 66	
June	1	—Burton & Irving, Interest to June 1, 1880, 13 years.	31 00	
June	1	—Andrews & Thompson, Interest to June 1, 1880, 13 years.	16 80	
June	1	—George Brown, Interest to June 1, 1880, 13 years.	40 41	
June	1	—George W. Webb & Co., Interest to June 1, 1880, 13 years.	25 00	

June	1—Hodges Bros., Interest to June 1, 1880, 13 years.	36 60	
June	1—Cushings & Bayly, Interest to June 1, 1880, 13 years.	31 62	
June	1—Schwardtman & Co., Interest to June 1, 1880, 13 years.	29 13	
June	1—Rudolph Oehl, Interest to June 1, 1880, 13 years.	88 33	
June	1—Daniel Seaton, Interest to June 1, 1880, 13 years.	115 00	
June	1—John Wakins, Interest to June 1, 1880, 13 years.	21 00	
June	1—A. J. Smith, Interest to June 1, 1880, 13 years.	60 00	
June	1—McC. Y. Barry, Interest to June 1, 1880, 13 years.	139 23	
June	2—W. H. C. Bayly, Interest to June 1, 1880, 13 years.	62 50	
June	1—Stephen Cremin, Interest to June 1, 1880, 13 years.	32 00	
June	1—George Bishop, Interest to June 1, 1880, 13 years.	30 00	
June	1—G. A. Schwartzman, Interest to June 1, 1880, 13 years.	43 88	
			39,397 59
June	1—F. B. Berkley, Interest to June 1, 1880, 13 years.	114 00	
June	1—Milton Bull, Interest to June 1, 1880, 13 years.	115 00	
June	1—Henry Vaughn, Interest to June 1, 1880, 13 years.	50 00	

June	1—George Bond, Interest to June 1, 1880, 13 years.	57 05
June	1—Andrew O'Meara, Interest to June 1, 1880, 13 years.	45 57
June	1—James Hood, Interest to June 1, 1880, 13 years.	24 56
June	1—W. H. Tibals, Interest to June 1, 1880, 13 years.	34 68
June	1—Edward McGeehan, Interest to June 1, 1880, 13 years.	57 84
June	1—F. Grill, Interest to June 1, 1880, 13 years.	19 25
June	1—Jacob Arnold, Interest to June 1, 1880, 13 years.	13 00
June	1—John Manly, Interest to June 1, 1880, 13 years.	23 57
June	1—Thomas McCullough, Interest to June 1, 1880, 13 years.	25 00
June	1—Thos. Burns, Interest to June 1, 1880, 13 years.	25 00
June	1—A. Boyce, Interest to June 1, 1880, 13 years.	28 00
June	1—F. Craig, Interest to June 1, 1880, 13 years.	10 80
June	1—J. Schleiffer, Interest to June 1, 1880, 13 years.	7 94
June	1—W. F. Anderson, Interest to June 1, 1880, 13 years.	17 50
June	1—Geo. McAllister, Interest to June 1, 1880, 13 years.	18 50
June	1—S. Bishop,	11 00

		Interest to June 1, 1880, 13 years.		
				40,095 85
1867.				
June	1	—Martin Clark, Interest to June 1, 1880, 13 years.	92 73	
June	1	—George Clark, Interest to June 1, 1880, 13 years.	63 00	
June	1	—S. S. Mann, Interest to June 1, 1880, 13 years.	116 20	
June	1	—H. Frank & Co,, Interest to June 1, 1880, 13 years.	24 00	
June	1	—Mrs. S. C. Pickett, Interest to June 1, 1880, 13 years.	20 00	
June	1	—C. E. Needles, Interest to June 1, 1880, 13 years.	8 00	
June	1	—E. Whitman & Sons, Interest to June 1, 1880, 13 years.	10 00	
June	1	—J. H. Walzl, Interest to June 1, 1880, 13 years.	39 22	
June	1	—McDowell, Robinson & Co., Interest to June 1, 1880, 13 years.	156 50	
June	1	—John T. Watkins, Interest to June 1, 1880, 13 years.	14 00	
June	1	—Hild & Mitchell, Interest to June 1, 1880, 13 years.	17 69	
June	1	—R. Sinclair & Co., Interest to June 1, 1880, 13 years.	33 90	
June	1	—Boerman & Littlebaum, Interest to June 1, 1880, 13 years.	39 27	
June	1	—Weiglein & Heilner, Interest to June 1, 1880, 13 years.	11 82	

June	1—Walter S. Moore & Co., Interest to June 1, 1880, 13 years.	26 76	
June	1—J. W. Ebert & Co., Interest to June 1, 1880, 13 years.	7 00	
June	1—Thos. D. Johnston, Interest to June 1, 1880, 13 years.	1,274 41	
			42,050 35
		42,050 35	
1867.			
June	1—Bolton Brothers, Interest to June 1, 1880, 13 years.	17 50	
June	1—David Anderson, Interest to June 1, 1880, 13 years.	67 75	
June	1—W. H. Oler, Interest to June 1, 1880, 13 years.	19 15	
June	1—Kelly & Piet, Interest to June 1, 1880, 13 years.	2,222 47	
June	1—"Evening Transcript," Interest to June 1, 1880, 13 years.	116 00	
June	1—Montgomery, Slade & Co., Interest to June 1, 1880, 13 years.	6 00	
June	1—Edward Sinn, Interest to June 1, 1880, 13 years.	3 50	
June	1—P. P. Pendleton, Interest to June 1, 1880, 13 years.	106 50	
June	1—J. A. Pierce, Interest to June 1, 1880, 13 years.	155 55	
June	1—D. Claude, Interest to June 1, 1880, 13 years.	25 00	
June	1—W. H. Glancote, Interest to June 1, 1880, 13 years.	36 25	
June	1—Hild, Wammelle & Mitchell,	4 45	

	Interest to June 1, 1880, 13 years.		
June	1—R. H. Tall, Interest to June 1, 1880, 13 years.	4 00	
June	1—James T. Ball, Interest to June 1, 1880, 13 years.	15 00	
June	1—John Nugent, Interest to June 1, 1880, 13 years.	75 69	
	A. S. Abell & Co., Balt. Sun, Interest to June 1, 1880, 13 years.	21 42	
June	1—Ammidon, Cranbie & Co., Interest to June 1, 1880, 13 years.	16 26	
			44,962 84
1867.			
June	1—G. C. Taliaferro, Interest to June 1, 1880, 13 years.	75 00	
June	1—C. M. Davis, Interest to June 1, 1880, 13 years.	71 66	
June	1—C. Yeugling, Interest to June 1, 1880, 13 years.	314 85	
June	1—Thos. Dobbins, Interest to June 1, 1880, 13 years.	75 00	
June	1—W. H. Gordon, Interest to June 1, 1880, 13 years.	12 50	
June	1—R. A. Crawley, Interest to June 1,1880, 13 years.	165 00	
June	1—Edward L. Clark, Interest to June 1, 1880, 13 years.	56 22	
June	1—A. N. Stewart, Interest to June 1, 1880, 13 years.	120 50	
June	1—Thos. H. Cook, Interest to June 1, 1880, 13 years.	149 50	
June	1—Benj. P. Grymes,	60 00	

	Interest to June 1, 1880, 13 years.		
June 1	—W. L. Keller,	141 97	
	Interest to June 1, 1880, 13 years.		
1867.			
June 1	—Geo. Walters,	95 00	
	Interest to June 1, 1880, 13 years.		
June 1	—A. J. Smith,	120 00	
	Interest to June 1, 1880, 13 years.		
June 1	—H. Heth,	373 66	
	Interest to June 1, 1880, 13 years.		
June 1	—W. D. Miller,	1,136 24	
	Interest to June 1, 1880, 13 years.		
			47,929 94
	Interest on $47,929.94 being the aggregate amount of claims on page 9 to page 26, inclusive, from June 1, 1867, to June 1, 1880, 13 years,	37,385 35	
			85,314 29
	Aggregate for principal and interest, from page 8, bro't forward,		319,166 72
	Aggregate principal and interest, class 1, brought forward,		104,911 40
1880.			
June 1	—Grand total to date,		$509,392 41

Statement No. 2,

Showing No. shares stock held in Nat'l Ex. & Trans'n Co., par value per share, aggregate par val. of s'd stock, where same is held, &c.

Where Held.	Par Value.	No of Shares.
New York,	$100 00	12,032
Baltimore,	"	4,044
Washington, D. C.,	"	1,815
Georgetown, "	"	945

Where Held.	Par Value.	No. of Shares.
Richmond,	$100 00	2,349
Staunton,	"	1,494
Charlottesville,	"	1,585
Lynchburg,	"	2,329
Norfolk,	"	280
Fredericksburg,	"	527
Virginia (miscellaneous),	"	276
Charlotte, N. C.,	"	287
North Carolina (miscellaneous),	"	365
Augusta, Georgia,	"	2,618
Atlanta, "	"	1,210
Macon, "	"	1,430
Savannah, "	"	290
Rome "	"	216
Montgomery, Ala.,	"	520
Mobile, Ala.,	"	142
New Orleans, La.,	"	1,863
St. Louis, Mo.,	"	3,270
Miscellaneous places,	"	207
Total No. shares,	"	40,044

Then 40,044 shares would make the par value of all the company's stock	$4,004,400 00
From which deduct 20 per cent. already paid in or lost,	800,880 00
Leaving par val., of unpaid stock to which creditors look,	3,203,520 00

The aggregate of debts, as shown by acc't No. 1, is $509,392.41 which will require an assessment of about 20 per cent. on $3,203,520, the value of unpaid stock as above reported, after making an extremely moderate allowance for insolvent stockholders. Indeed, I feel very sure that the sequel will show it to be insufficient.

O. G. KEAN, Comm'r.

DEPOSITIONS RETURNED WITH COMMISSIONER'S REPORT:

Glenn's Adm'r
vs.
National Express and Transportation Company.

Comm'r's Office, Nov. 8th, 1879.

Depositions of M. B. Poitiaux and others taken before me, O.

G. Kean, a commissioner in chancery for the chancery court of Richmond, to be read as evidence on inquiries directed by decree of said court pronounced October 6, 1879, in a certain cause depending before it under the short style of "John W. Wright, sheriff, and as such adm'r of W. W. Glenn, deceased v. The National Express and Transportation Company."

Present—John Howard, Esq., p. q.

No counsel present for def'ts.

M. B. Poitiaux, a witness of lawful age, having been first duly sworn, deposeth and saith as follows:

1st quest. by the commissioner. What is the purport of the papers now filed by you marked "M. B. P. No. 1" and "M. B. P. No. 2," and "J. P. McC."?

Answer. They show that the National Express and Transportation Company is indebted to me in two sums—viz.: $300 for my services as cashier of the 1st division of said company for 3 months, and also $27.25 for money expended by me for the company. Both sums bear interest from Jan. 31st, 1867. The paper "J. P. McC." shows that there is due to Joseph P. McCorkle $250, with int. from Jan. 15, 1867, for his services as auditing clerk of the company. The paper "M. B. P. No. 2" is receipted at the bottom, but I never received the money.

Major Briscoe G. Baldwin was superintendent of the co. and told McCorkle and myself to make up our accounts and receipt them and he would pay them out of some money of the co. he expected to receive. We accordingly did so, and I find in my private papers receipts signed by us for part of the amounts named in "M. B. P. No. 1" and "J. P. McC," but the money was never paid us and the receipts were never delivered. These receipts I now file with the exhibits respectively so as to show the whole transaction.

These certificates were made out by me from my books and pay-rolls as cashier of the first division. By the direction of the authorities in Baltimore, I gave similar certificates to each employee of the company, in my division, to whom anything was due. These books and pay-rolls went out of my possession after the suspension of the company. I know that the amounts shown by the papers "M. B. P. No. 1," "M. B. No. 2," and "J. P. McC," are still due.

2d question by John Howard, Esq., p, q. How long were you cashier of the National Express and Transportation Company?

Answer. About seven or eight months; and I was in office when

the company suspended. I was appointed cashier by B. F. Ficklin, the general superintendent of the company.

3d question by same. Have you ever resigned or been removed?

Answer. I never resigned, nor was I ever removed.

4th question by same. Where was your office?

Answer. All the time I was cashier of the division my office was in Richmond.

5th by same. Did you transact at the Richmond office of the said company all the business devolved on you as cashier?

Answer. I was cashier of that division, and was complimented on the way I discharged my duties. I did all the business of the division which was assigned to me, and did it at the Richmond office. My division, the first, comprised Virginia, North Carolina, a part of South Carolina, and Bristol, Tennessee. I was only cashier in that division.

6th by same. Do you know of any visible property of any kind, in this State or elsewhere, belonging to the said company?

Answer. I do not now; nor do I know what became of the property it had; except some few old trash papers and blank forms, which I sold for some $27 or $30. These matters are very old, and as I am examined my memory is partly refreshed. I think I must have paid for the articles charged in the paper "M. B. P., No. 2," with that money, and I therefore withdraw that account as evidencing a debt due me. I never collected the other money due me, because I paid out what money was in my hands to drivers and other employees, relying for my own money on Major Baldwin as I have said, and since he failed to pay me, I have known no way of making the money.

7th question by same. State whether or not General Joseph R. Anderson, of this city, was a director of said company?

Answer. I always understood and believed him to be such.

And further this deponent saith not.

M. B. POITIAUX.

J. E. Brister, a witness of lawful *of lawful* age having been first duly sworn, deposeth and saith as follows:

1st quest. by John Howard, Esq., p. q. What is your occupation?

Answer. I am a printer at the office of the "Richmond Whig."

2nd by same. Look at the printed slip now shown you, marked "Richmond Whig," and say what it is?

Answer. It is an exact printed copy of a "local report" which appeared in the "Richmond Whig" of Wednesday morning, Oct. 31st, 1866. The "Richmond Whig" is a newspaper published then and now in the city of Richmond.

[The witness here produced before the commissioner an original file of the "Richmond Whig" for the year 1866; and upon examination of the same by the commissioner, the printed exhibit "Richmond Whig" above filed, was found to be a correct copy of the same.

O. G. KEAN, Com'r.]

I am a practical printer, and printed the slip I have filed. It is an accurate copy.

And further this deponent saith not.

JNO. E. BRISTER.

General Joseph R. Anderson, a witness of lawful age, having been first duly sworn, deposeth and saith as follows:

1st quest. by John Howard, Esq., p. q. What is your residence and occupation?

Answer. Richmond; President of the Tredegar Company.

2nd by same. Please look at the file of the "Richmond Whig," now shown you, and particularly at the number of Oct. 31st, 1866, and read the report therein made of meetings of the stockholders of the National Express and Transportation Company, held at the Exchange Hotel, in the city of Richmond, Monday evening, Oct. 29th, 1866, and on the following day (a printed copy of which has been filed and proved in this cause) and say whether or not you are the person referred to in said report?

Answer. I have no doubt I am.

3rd by same. Were you present and did you take part in said meetings of the stockholders?

Answer. That is my recollection.

4th by same. What assets has the National Express and Transportation Company, in this state or elsewhere, so far as you know?

Answer. None that I know of.

5th by same. Do you mean visible property?

Answer. I know of no visible property.

6th by same. Have the stockholders of said company, to your knowledge, had any meeting since those above referred to?

Answer. I recollect none.

7th by same. Please look at the printed circular, now shown you, dated Oct. 20th, 1866, and signed "Joseph R. Anderson, chairman," now filed, marked "J. R. A.," and say whether the signature thereto is yours?

Answer. I have no doubt it is.

And further this deponent saith not.

JOSEPH R. ANDERSON.

No other witness appearing, the further taking of these depositions is adjourned to the 18th day of November, 1879, at the same place and hour.

O. G. KEAN, Com'r.

Richmond, Nov'r 18th, 1879.

Pursuant to the foregoing adjournment, the further taking of these depositions was resumed and continued as follows:

Present—John Howard, Esq., for compl'ts.

No other counsel.

John T. Snowden, having been duly sworn, deposes and says as follows:

1st question by John Howard, Esq. State your name, age, residence and occupation?

Answer. John Thomas Snowden; I am 56 years of age, reside in Baltimore, Maryland, and am at present one of the deputy clerks of the superior court of Baltimore.

2nd by same. What was your residence and what your occupation in the years 1865 and 1866?

Answer. My residence was Baltimore city, as at present. My occupation then was that of a clerk in the auditor's department of the Baltimore and Ohio Railroad Company. My business was to audit the accounts in said department. I don't know that I audited all, but I audited many of the accounts—many of the accounts of agents on the line of the road. We had at various points on the road what may be termed sub-agencies, offices located for the convenient transmission and receipt of freight, &c.; and it was the duty of all the sub-agents, controlling these offices, to make reports from time to time of their receipts and shipments to the principal office in Baltimore. There they were examined, and if correct, audited and entered in proper books kept for the purpose. Whenever any agent made a shipment of goods, he sent along with them a "manifest," showing the amount of freight. If the freight were paid at his office, he would be chargeable with the amount if it was to be collected at the point of destination, then the agent at that point would be responsible. In this way the several agents were made to operate, to some extent, as checks on each other. The auditor's office of the Baltimore and Ohio Railroad was in the city of Baltimore, and is the principal office of that road for the adjustment of its accounts.

3rd by same. State whether or not in the year 1866, say from March to October inclusive, the defendant, The National Express and Transportation Company, had its express matter transported by

the Baltimore and Ohio Railroad Company on the lines of its road?

Answer. It did.

4th by same. Were, or not, the accounts for such shipments or transportation kept and adjusted at the said principal office of the Baltimore and Ohio Railroad in Baltimore?

Answer. They were kept at the auditor's office of said railroad in the city of Baltimore.

5th by same. Please look at page 182 of the book now shown you, purporting to be a book of entries of the Baltimore and Ohio Railroad Company, and say what the book is, and particularly what appears on said page?

Answer. This book is one of the ledgers kept in the auditor's office of the Baltimore and Ohio Railroad Company, containing accounts against its agents and others for indebtedness for transportation of freight. It was given to me in the auditor's department of said road yesterday to bring here to-day. On page 182, in this book, appears the account of the National Express and Transportation Company.

6th. by same. In whose handwriting do the said entries of that account appear to be?

Answer. They are mine, and they were made by me, as are all the entries in said book in regard to the National Express and Transportation Company.

7th by same. Were they, or not, made in the ordinary and regular course of business?

Answer. They were made in the regular course of business.

8th by same. Please examine a paper, now shown you, purporting to be a copy of that account, marked "B. & O. R. R.," and to be filed as a part of your deposition, and state whether or not it is a correct copy of said account?

Answer. I have compared said paper with the account on the ledger, with the aid of the commissioner, and now state that it is an exact copy of said account, except that the account on the books does not contain the interest calculations appearing on the paper "B. & O. R. R."

9th by same. What is the balance due the Baltimore & Ohio R. R. Co. from the National Express and Transportation Co. by the account on the ledger you have referred to?

Answer. Forty-one thousand four hundred and thirty-two dollars and thirty-eight cents ($41,432.38).

10th by same. Is that, or not, the correct amount due, with interest to the present time?

Answer. I believe that to be the correct amount due.

11th by same. State whether or not the said account, as it appears on the ledger, was duly rendered to the National Express and Transportation Company, about the date of the last entry?

1st question by John Howard, Esq. State your name, age, residence and occupation?

Answer. Clapham Murray; I am forty-one years of age; reside in Baltimore, and I am assistant cashier in the "city collector's office."

2nd by same. State whether or not you have ever been in the employment of the Bank of Commerce, of the city of Baltimore; and if so, in what capacity and during what time?

Answer. I have been in the employment of said bank. I was appointed discount clerk of said bank September 1st, 1865. I remained with that bank, as well as I remember, about five years, during about 14 or 15 months of which time I was its cashier.

3rd by same. Look at the paper now shown you, marked "B. C. B." purporting to contain, among other things, a memorandum of certain notes discounted by the Bank of Commerce of Baltimore for the National Express & Transportation Company, and say whether the same is correct, and whether said notes were in fact discounted by said bank for said company?

Answer. I have looked at the paper referred to, and with the aid of the first book-keeper of the said bank, and in the presence of the commissioner, have carefully compared it with the books of original entries of the bank. The said paper is a correct copy of those books. The notes therein mentioned were discounted by the bank for the National Express and Transportation Company, and are still unpaid, so far as I know. I was the discount clerk of the bank during the period covered by these transactions, and either kept or supervised the books wherein the original entries were made These books are now before me, and I know the entries to be correct. All notes and other paper discounted by the bank passed through my hands, and were examined by me—these among others. There are credits noted on paper "B. C. B.," showing payments on account of the notes above referred to and the other indebtedness. They are doubtless correct, but I know nothing about them. I have examined the receipt book of the bank, which is now before me, and by comparison with the paper "B. C. B.," find that the notes and acceptances mentioned in that paper were delivered to Messrs. Willis & Thomas, attorneys and counsellors at law, of Baltimore, for collection.

And further this deponent saith not.

CLAPHAM MURRAY.

The further taking of these depositions is adjourned, to be continued on Tuesday, Dec'r 16th, 1879, at the same place and hour.

O. G. KEAN, Com'r.

Richmond, Dec. 16, 1879.

Met pursuant to adjournment.

Present: John Howard, Esq., for compl't.

No other counsel.

Enoch Pratt, having been duly sworn, deposes and says as follows:

1st question by John Howard, Esq. State your name age, residence, and occupation?

Answer. Enoch Pratt; I am seventy-one years of age, reside in Baltimore, and I am a merchant—a bank president—and vice-president of the Philadelphia, Wilmington & Baltimore railroad, in which I am also a director. I have been vice-president of said road about ten or twelve years, and a director in it for about twenty-five years.

2nd by same. Please look at the account marked "P. W. B.," to be filed with your deposition as part thereof, bearing date September 18, 1868, and state whether or not the said account is correct?

Answer. Yes; it is a correct account of the acceptances mentioned and described in the petition of the Philadelphia, Wilmington and Baltimore R. R., filed in this case, and correctly represents the indebtedness of the National Express and Transportation Company to the said railroad company. I append to said account notices of the protest of said acceptances, and have carefully and diligently searched among the papers of the railroad company for the acceptances themselves without success. If found, they shall be at once forwarded to the commissioner.

3rd by same. Who was H. F. Kenney, mentioned in the said notices of protest?

Answer. He was the superintendent of the Philadelphia, Wilmington & Baltimore Railroad Company.

4th by same. Who was Richard F. Allison, referred to in said notices?

Answer. He was styled the cashier of the National Express and Transportation Company at Baltimore.

5th by same. What was the consideration for said acceptances?

Answer. The transportation of express matter over the line of the Philadelphia, Wilmington & Baltimore R. R. for the National Express and Transportation Company, and charges thereon; the whole amount due for which is represented by the acceptances already referred to.

6th by same. Who was the S. P. Wilbank, mentioned in the notices of protest above referred to?

Answer. He was a party in the employ of the express company.

I don't know what his position was, but am satisfied he was authorized to draw the drafts, as otherwise they would not have been accepted. We generally had weekly settlements with the National Express and Transportation Company, and the acceptances in question were given in settlement of the accounts growing up from week to week. These accounts on September 18, 1868, aggregated the sum of $7,736.74, which, with interest from that date on $6,921.25, the principal of said sum, is the amount still due and unpaid from the National Express & Transportation Company to the Philadelphia, Wilmington & Baltimore Railroad Company.

And further this deponent saith not.

ENOCH PRATT,
Vice-Pres't Phila., Wil. & Balti. R. R. Co.

The further taking of these depositions is adjourned to be continued April, 26, 1880.

OTHO G. KEAN, Com'r.

Com'rs Office, April 26, 1880.

Depositions were continued pursuant to adjournment as follows:

Present. John Howard, Esq., p. q.

John J. Kelly, a witness of lawful age deposeth and saith as follows, having been first duly sworn:

1st quest. by Mr. Howard, p. q. What is your residence and occupation?

Answer. I am a manufacturer of straw goods and reside in New York city.

2nd by same. Where did you reside in 1866?

Answer. Part of the time in Richmond, part of the time in Baltimore.

3rd by same. State what connection you had, if any, with the deft., the National Express & Transportation Co., during that time, and what opportunities you had of knowing its business and the officers and agents who conducted it?

Answer. I was first general auditor of the Co., subsequently a director and vice-president, and for the remainder of my term with them general superintendent. In all of these capacities I was familiar with the affairs of the Co. and with its officers and agents, books and accounts.

4th by same. Where have you subsequently resided?

Answer. In the city of New York.

5th by same. State about what time the Co. failed and ceased its operations?

Answer. I think the active operations of the Co. were closed up in November or December of 1866. Its various offices were closed as rapidly after that as possible.

6th by same. What connection, if any, did you have with the assets of the Co., after its failure, and in what capacity; and what action did you take in the matter, if any?

Answer. I was one of three trustees, to whom the Co., by a deed of trust dated Sept. 20th, 1866, (and mentioned in the papers of the case) assigned its affairs. The deed was not delivered to us, according to its provisions, until some time later, when we took charge of the affairs of the Co. My co-trustees were John Blair Hoge and C. Oliver O'Donnell, then both of Baltimore. Mr. O'Donnell has since died, but he never took any active part in the matter. Mr. Hoge is now in W. Va. I was the most active in the matter, but consulted Mr. Hoge. We met from the start with difficulties in the way of attachment suits and otherwise, and even before the deed of trust became operative, by recording it at the various points necessary, the larger part of the personalty of the Co., in fact all its personalty, was seized in such suits, and never came into our possession. We made efforts everywhere to realize the personal property of the company, but without the slightest sort of success. We were met with serious law proceedings in Maryland, where the affairs of the company were taken out of our hands and put in those of a receiver, and by a suit in New York, by which we were enjoined from doing anything further in the matter. The trustees have been without funds either to prosecute or defend these litigations, and the trust has consequently been permitted to lie without action. It should be added, however, that the trustees did defend the proceedings in Maryland, and the receiver there was removed, and the affairs of the Co. returned to our hands.

7th by same. What part, if any, of the assessments, made by the company upon the stockholders before it failed, were collected by you and your co-trustees; and what effort did you make to collect them?

Answer. I have no recollection of any collection on account of assessments on stock. All our efforts were delayed, as previously stated, and finally stopped by the injunction proceeding in New York.

8th by same. State whether or not the Co. received any notes from stockholders on account of said assessments; and if so, what became of them?

Answer. I think there were notes and obligations from Ficklin used as collateral to raise money on at some time during the existence of the Co. The Co. sometimes drew on various stockholders

for amount of their assessments and deposited the drafts with its endorsement, as collateral for loans, or sent them through the bank for collection. In every case the Co. was the debtor, so far as the bank was concerned. This was particularly the case towards the close of the operations of the Co., when drafts for a large part of their last assessment were made upon the stockholders, and those drafts used to obtain money from the Bank of Commerce, with which the drafts were deposited.

9th by same. State, if you know, whether or not, a great many of the stockholders of the Co. have become insolvent?

Answer. I only know one or two instances, in my own knowledge, in New York city. I am informed that very many of them have become insolvent.

10th by same. What percentage of assessment had been made when the Co. ceased business?

Answer. In all, twenty per cent.

11th by same. What became of the books and papers of the Co., on its failure, and in whose custody and where have they been since?

Answer. The books and papers came into the possession of the trustees in Baltimore, were taken from them by the order of a local court in Maryland and placed in the hands of Thomas G. Pratt, as receiver, and subsequently, after his receivership had been vacated, they came into my possession, and I have had them in the city of New York ever since.

12th by same. Have you any of those books here present; and if so, state what they are, and so describe them as that they can be identified; and state also, if you know, in whose handwriting they severally are?

Answer. I have some of the books here, having brought them from New York at the call of counsel for the plaintiff; and will leave them in the commissioner's possession, that he may examine them thoroughly, and make such extracts as may be necessary, with the understanding, however, that when they have been so examined and extracts made, they are to be returned to me in New York. I do not feel authorized to surrender them absolutely.

They are as follows:

1. "Stock ledger A. N E. T. Co." It contains an account with each individual holder of stock; showing date of certif. from and to whom transferred, number of the transfer, number of the certificate, number of shares and requisitions (or assessments) drawn. It is in the handwriting of the treasurer of the Co., Mr. J. V. H. Allen. I know his handwriting personally and know that he was treasurer.

2. "Subscriptions National Express Co.," containing a list of the stockholders of the Co., classified under the names of the places in

which the subscriptions were made or the stock held. Showing the name of each stockholder at said place, the number of shares held, the amount paid, the amount due, and the votes to which he was entitled.

It is partly in the handwriting of the treasurer, Mr. Allen, and partly in that of the transfer clerk, his assistant. His name was Robt: Mayo, I think. I know his handwriting.

3. "Record N. E. & T. Co. Board of Directors," containing a record of the meeting and proceedings of the stockholders and directors.

It is in the handwriting of the various secretaries of the Co., or secretaries *pro tem.*—J. V. H. Allen, P. T. Moore, and others.

On page 153–4 is a memorandum in my own handwriting, which shows on its face that it is not a minute of any official proceedings, but only an abstract of proceedings, showing succession of officers, &c.

The page 152 closes the record of the last meeting of the directions of the Co. I know both signatures to be genuine. "J. V. H. Allen, secretary," "M. G. Harman, vice-president."

4. "Trial balance sheet," containing the trial balances of the general ledger from time to time. Semi-monthly to monthly trial balances, the last being dated Oct. 8th, 1866. It shows the condition of the Co., so far as written into its books, up to that date. It is in the handwriting of the accountant of the Co., A. B. Johnston.

13th by same. State whether or not you have any books, papers or other memoranda which will enable you or anyone to show what was the actual indebtedness of the Co. at the time it ceased operations, and to whom severally this indebtedness was due?

Answer. I have no such books, papers or memoranda. Nothing in the possession of the trustees or Co. would make a complete statement. Many claims were never presented to the trustees or to the Co. in any shape which has been preserved.

The Co. continued to contract debts with the railroad, its employees and others after October, when the books stopped, and the last balance was shown.

I may have in New York books which will give more information above the indebtedness of the Co. than the trial balance of the general ledger If so I will send them on to the com'r to be returned to me with the other books, as above stated. I know that I have the journal corresponding with the ledger, from which the trial balances were taken. I will describe such books as are sent in a letter addressed to the com'r, which I ask him to accept and file as part of this deposition.

14th by same. Have you any claim of your own against the Co. for services or otherwise? If so, please state it?

Answer. I have a claim against the Co., for services as general

supt., and disbursements for travelling expenses, &c., in the service of the Co., amounting March 1st, 1867, to $2,383.47—none of which has been paid. I will enclose an account of it, verified by affidavit, (showing how much of it appears on the books of the Co., and how much accrued after the books were closed) to Com'r Kean as part of my deposition.

15th by same. Do you know anything of a claim of H. Warfield against the Co.?

Answer. I know he has a considerable claim against the Co., arising out of a compromise between them. The Co. gave him notes, the consideration of which was a surrender of stock on his part. I see in the hands of the counsel for Warfield, four notes dated Aug. 10, 1866, due at 3, 6, 9 and 12 mos., for $750 each, signed with the genuine signature of Jos. E. Johnston, President. I see also a certified copy of the minutes authorizing this settlement, with the gennine attestation of J. V. H. Allen, Secretary. The above papers are here filed with this deposition.

And further this deponent saith not.

JOHN J. KELLY.

Adjourned to meet again May 7th, 1880.

O. G. KEAN, Com'r.

Richmond, May 7th, 1880.

L. R. Smoot, having been duly sworn, deposes and says as follows:

1st question by Jno. Howard, Esq. State your name, residence and occupation?

Answer. Luther R. Smoot; I reside in Baltimore, Maryland, and am now secretary of a gas light company in that city.

2d by same. State what connection you had, if any, with The National Express and Transportation Company; at what time and for how long you were so connected with it; and what opportunities, if any, you have had for knowing the business and indebtedness of said company?

Answer. I took a position with that company as assistant to the general superintendent on March 8th, 1866, and remained until August 10th, of the same year. After the appointment of the receiver, Thomas G. Pratt. formerly Governor of Maryland, by the circuit court of Baltimore, at the suit of W. W. Glenn and others, I was appointed by said receiver with the approval of the court, to take charge of all the books and papers and retain the custody of the same until they were transferred under a decision of the court

of appeals of Maryland, to the trustees of the company, viz: John J. Kelly, C. Oliver O'Donnell and John Blair Hoge. It was, I think, from about December, 1866, to July, 1867, that the books remained in my custody. I was directed by the receiver to procure and examine all claims against the company previously filed with the trustees, and all others received at the receiver office. I performed that duty and submitted the claims, properly authenticated, to the circuit court of Baltimore, together — lists of the said claims by states; copies of which lists I now file with the commissioner, numbered respectively 1, 2, 3, 4, 5, 6, 7, 8, 9, as part of my deposition. I filed the original claims in the circuit court of Baltimore as being the established debts against the Express Company, aggregating a total indebtedness of $107,164.49— I mean so far as such claims were presented before the receiver. Under an order of court the receiver made a call for all persons holding claims to produce them before him on or before May 1, 1867. Many persons did not, however, bring in their claims. All the papers in said suit in Baltimore have been lost. Many persons presented their claims, through counsel, to the court, generally demands on written contracts.

3rd by same. Do you know what counsel, if any, represented the Bank of Commerce in that suit?

Answer. S. Teakle Wallis, in his individual capacity, or his firm, Wallis & Thomas, I don't know which. I know that I furnished Mr. Wallis some information from the books of the company. The account of the said bank was in part secured by notes given by stockholders of the company for assessments. It could not be made up for a long time, as many of these notes had not matured.

4th by same. Do you personally know of any other claims against said company which are just?

Answer. I do; I know of those appearing on the list which I now file with the commissioner, marked No. 10, all of which are justly — to the persons named in said list; being mostly due to the employees of the Baltimore office. And in addition the company owes me a separate debt of $770, principal, being my pay for the entire period of service from March 8th to Aug. 10th, 1866. I now file the evidence of said claim, marked No. 11 & 12. I also file herewith, as No. 13, a memorandum, two items of which I now desire to prove, viz.: that of H. Heth, for $373.66, and that of W. D. Miller, for $1,136.24. I also desire to file with my deposition a paper marked No. 14, the same being a memorandum of some of the claims against the company made about June 12th, 1876. I made the said memorandum, and am satisfied of its correctness: and I will remark that I see from it that the Bank of Commerce was represented by S. T. Wallis. I also file as No. 15, a piece of the scrip of said company. It bears date Jan'y 25,

1866, and shows the way in which assessments on stock were paid and to be paid.

5th by same. Please look at the books now shown you, being those referred to in the deposition of John J. Kelly, and left with the commissioner, and say whether you recognize them as part of the books formerly in your custody?

Answer. I do. I, however, had charge of many besides these.

And further this deponent saith not.

L. R. SMOOT.

STATE OF VIRGINIA—*City of Richmond, to-wit:*

I, Otho G. Kean, a comm'r in chancery for the chancery court of Richmond, do certify that the foregoing depositions were duly taken, sworn to and subscribed before me at the time and place named therein.

Given under my hand, this 19th day of June, 1880.

OTHO G. KEAN, Comm'r.

EXHIBIT "RICHMOND WHIG," WITH DEP'N OF J. E. BRISTER, PAGE 119.

National Express & Transportation Company.

A meeting of the stockholders of this company was held on Monday evening at the Exchange Hotel. On motion, Mr. Peachy R. Grattan was called to the chair.

Mr. Kelly, from the committee appointed to confer with the Merchants' Union Express Company, New York, made a report of the result of said negotiation, and read a communication showing that the proposition to that company to purchase the preferred stock of the National Express and Transportation company was not acceded to.

Gen. Anderson moved that a committee of five be appointed to report a plan for the reorganization of the company; said report to be presented at a meeting to be held the following morning.

The chairman appointed the following committee: Lewis V. Bogy, of St. Louis; John B. Miner, of Charlottesville; Thomas J. Michie, of Staunton; M. G. Harman, of Staunton; and Gen. Joseph R. Anderson, of Richmond.

Mr. Bogy moved that Wm. H. Perot, of Baltimore, be telegraphed to, and asked whether he would accept the presidency of the company. This motion was adopted unanimously. Mr. Bogy spoke very highly of Mr. Perot, as a gentleman of high reputation, large means, and anxious for the success of the company. Mr. Bogy suggested $2,500 as the salary, but, at the same time,

remarked that he knew Mr. Perot, if he accepted the office, would not care much about the amount of salary.

On motion of Gen. Anderson, the meeting adjourned to next morning at 11 o'clock.

Adjourned Meeting.

The stockholders reassembled yesterday morning, and the committee appointed by the previous meeting made an elaborate report, through its chairman, Mr. Bogy, on the subject of reorganization. From this report we find that

557	shares had been taken, on which nothing has been paid.						
1,154	shares on which 1 per cent. has been paid and no certificate issued.						
2,169	shares on which	5	per cent.	have	been	paid.	
20	"	"	7½	"	"	"	"
8,087	"	"	10	"	"	"	"
25	"	"	11	"	"	"	"
20	"	"	12½	"	"	"	"
250	"	"	13	"	"	"	"
12,554	"	"	15	"	"	"	"
20	"	"	15½	"	"	"	"
15,188	"	"	20	"	"	"	"
40,044	total amount of shares.						

The company has collected from its stockholders in cash,	$534,748
From the same parties, in notes, which are considered good,	54,436
	$589,184
Indebtedness of every description,	273,000
	$862,184

Assets.

The company has, in wagons, horses, harness, books, stationery, safes and office fixtures, the sum of	$235,120	81
In bills receivable as above mentioned,	54,436	00
Total,	$289,556	81
Thus leaving a loss of	$572,627	19

There is due the company by stockholders as delinquents—and this based only on the 36,440 shares of the stock on which 10 per cent. and upwards has been paid—the sum of $145,855 will pay up

the stock to 20 per cent., and the report proposes that an additional call of 10 per cent. be made, based on these 36,440 shares, which would give the sum of $361,440.

The cash means would then be:

Already due,	$145,855
Proposed call of 10 per cent. on 36,440 shares,	361,440
Total,	507,295
Which, added to the amount of assets on hand, would make a total of	$796,851 81

The report goes on to say that if the stockholders pay up as proposed in it, the condition of the company will be as follows:

Amount due on previous calls,	$145,855
Amount for proposed calls,	361,440
	$507,295
Less the debts,	273,000
	$234,295

Leaving the sum of $234,295 on hand, besides the property, to carry on the business, which the company say they deem ample, provided the administration of affairs of the company be able and economical. (This is but a brief abstract of the report, which is quite lengthy.)

The following resolutions, drawn up by the committee, were then read:

Resolved, That this meeting sees nothing in the present condition or future prospects of this company to induce despair of the ultimate success of our enterprise.

2. That, with a fund of subscribed stock, yet untouched, in the hands of solvent shareholders, amounting to upwards of $3,000,000, of which less than one-tenth will discharge all our liabilities, and less than one-fifth will enable the company to proceed prosperously with its operations, insolvency is absurd, and failure to succeed wholly unnecessary.

3. That to pay the debts, and resuscitate the credit of the company is the first duty and purpose of the stockholders, to which end every shareholder is already pledged and bound by law to the full extent of the stock owned or subscribed by him.

4. That this meeting being satisfied that thirty per cent. of the stock at present subscribed will suffice to pay the debts and prose-

cute the business of the company successfully, would now, if it possessed the legal power, reduce and consolidate the stock by reducing the number of shares to three-tenths of the original amount; but that being impracticable without an amendment of the charter, the stockholders here present pledge themselves, and hereby instruct the president and directors to endeavor to obtain such amendment from the General Assembly of Virginia as soon as it shall again be convened in December next.

5. That in addition to the requisitions heretofore made, amounting in the aggregate to twenty per cent., the president and directors be instructed forthwith to make a further requisition of ten per cent. upon the stockholders—five per cent. payable within thirty days, and five per cent. within ninety days—and that they proceed, without delay, to enforce payment from all delinquents by the promptest and surest process of law.

6. That the president and directors be advised to suspend the active operations of the company, taking due care of all its property until the stockholders shall have responded to the requisitions upon them as to supply a fund sufficient to pay the debts and extend the business without further embarrassment.

7. That the creditors have in the obligation, willingness and ability of the stockholders to pay with honorable promptitude the debts respectively due, the amplest security therefor. They are respectfully appealed to to forbear such proceedings as can only tend to delay, embarrass and injure the company, without, in any wise, hastening that result of the speedy liquidation which the stockholders desire and aim at not less earnestly than themselves.

8. That the stockholders now present address themselves with confidence to their fellow-stockholders urgently, but most respectfully, reminding them that they cannot, and ought not, to seek to evade responsibility for the debts already incurred, and that in justice to all concerned, the commercial enterprise on which we entered, so needful as it is to the business of the country, and of which we esteem the future success already assured, cannot be abandoned without eminent discredit. They therefore trust that each stockholder, for his own sake, and for the sake of the company, will respond promptly and fully to the calls made upon him.

9. That the president and directors be specially instructed to cause the interests and rights of the company, now in litigation in Alexandria, Baltimore and New York, or elsewhere, to be diligently cared for and protected.

10. That as soon as the debts of the company shall be paid, or satisfactorily arranged, the business shall be gradually resumed, as fast and as far as circumstances shall allow, and, at all events, in season for spring trade.

11. That the president and directors be requested to apply to the general assembly of Virginia as soon as it shall convene, in Decem-

ber next, for an amendment to the charter, reducing the capital of the company to a minimum of $1,000,000, with power to increase it to $2,000,000, and limiting the liability of the stockholders upon their raising subscriptions to forty per cent. thereof.

12. That it shall be an invariable rule, from which the president, directors and superintendents are specially charged, to allow no departure; that all the employees of this company, who receive or disburse money, shall execute and file with the secretary, before entering upon their offices, bonds in adequate penalties, and with sufficient security, to be renewed from time to time, as occasion requires, for the faithful discharge of their duties.

13. That the utmost energy and promptness on the part of all officers and employees of the company, with a pervading spirit of economy, are deemed necessary to success; and therefore we recommend to the board great vigilance in this regard.

General Anderson then offered the following resolution, which was adopted:

Resolved, That the report of the committee be adopted, with the following modifications, viz: Whereas, this meeting is fully satisfied that the payment of thirty per cent., as indicated in the report, is sufficient to carry on the business of the company, yet, as a matter of precaution, this meeting recommend, that when consolidation is effected by amendment to the present charter, it be based on forty per cent., and entire release of the remaining sixty per cent.; this additional ten per cent. to be called or not, as the exigencies of the company may arise, and not to be called on unless the same be necessary.

On motion of Mr. Michie, it was

Resolved, That the president of the company is hereby instructed to lay before the Hon. J. C. Underwood, judge of the eastern district of Virginia, the proceedings of this meeting.

The stockholders then proceeded to make nominations for a board of directors, when the following gentlemen were nominated and unanimously approved of:

W. H. Perot, Baltimore.
E. J. Foley, Baltimore.
Wm. Devries, Baltimore.
Joseph R. Anderson, Richmond.
Wm. H. Webb, New York.
J. Carter Marbury, Washington.

R. P. Zimmerman, Atlanta.
M. G. Harman, Staunton.
Lerenzo Norvell, Lynchburg.

On motion of Gen. Imboden, it was

Resolved, That the report of the committee and proceedings be published in the city papers, and that the secretary have five hundred copies published in pamphlet form, and send one to each stockholder without delay.

The meeting then adjourned *sine die.*

In the course of the proceedings, reference was made more than once to the secretary, Mr. J. V. H. Allen, and to the general superintendent, Mr. John J. Kelly (formerly of Wells, Fargo & Co.'s Express), in terms highly complimentary for their efficiency, and the ready and satisfactory manner in which they answered all questions put to them in connection with their departments, and it appeared to be the universal wish of the meeting that they should be continued in office.

Examined and found correct.

O. G. KEAN, Comm'r.

EXHIBIT "M. B. P., No. 1," WITH DEP'N M. B. POITAUX, PAGE 116.

Office Nat. Express & Trans. Co.,
Richmond, Va., January 31st, 1867.

To the Trustees of the Nat. Express & Trans. Co, Baltimore:

Gentlemen: I would hereby inform you that there is due by this company to myself the sum of three hundred dollars for my services, as cashier 1st division N. E. and T. Co., from 1st November, 1866, to date, at $100 per month.

Yours respectfully,

M. B. POITIAUX,
Cashier 1st Div. N. E. & T. Co.

Richmond, Va., Nov. 30th, 1866.

Received of the National Express and Transportation Company,

one hundred dollars, in full for services as cashier 1st division, from 1st Nov'r to 30th Nov'r, for the month of November, 1866.

$100.

M. B. POITIAUX.

[U. S. Inter. Rev. Stamp, 2 cts.]

EXHIBIT "M. B. P., No. 2," WITH DEP'N M. B. POITIAUX.

The National Express and Trans. Co.,
To M. B. Poitiaux, cashier, &c., Dr.

For following amounts paid by him during the months of November and December, 1866, for petty expenses in his office at Richmond, Va., viz:

For 2 loads of anthracite coal,	$20 00
For freight on sundry packages reports, &c., received by express, $1, $1.25, 25c., 25c., 50c., and 25c.,	3 50
For 30 2c. revenue stamps,	60
For 60 3c. postage stamps,	1 80
For putting away coal in office,	25
For repairing lock to front door,	50
For matches for office,	10
For hauling cashier's books and papers from office,	50
Total,	$27 25

[U. S. Inter. Rev. Stamp, 2c.]

Received payment in full.

M. B. POITIAUX.

☞ Withdrawn by Mr. Poitiaux.

EXHIBIT "J. P. McC.," WITH DEP'N OF M. B. POITIAUX.

Office Nat. Express and Trans Co.,
Richmond, Va., January 15th, 1867.

To the Trustees of the Nat. Express and Trans. Co., Baltimore:

Gentlemen,—I would hereby inform you that there is due by this company to Mr. Joseph P. McCorkle the sum of two hundred

and fifty dollars for his services as auditing clerk 1st division N. E. & T. Co. from 1st Nov'r, 1866, to date, at $100 per month.

Yours respectfully,

M. B. POITIAUX,
Cashier 1st Div. N. E. & T. Co.

Richmond, Nov. 30th, 1866.

Received of the National Express and Transportation Company one hundred dollars in full for services as clerk in auditing department from 1st Nov. to 30th Nov., for month of November, 1866.

J. P. McCORKLE.

$100.

[U. S. Inter. Rev. Stamp, 2 cts.]

EXHIBIT "J. R. A.," WITH DEP'N OF JOS. R. ANDERSON, PAGE 120.

Richmond, Va., October 20, 1866.

To Messrs.

of :

Gentlemen,—At the general meeting of stockholders held in pursuance of a call of the Board of Directors of the National Express and Transportation Company, in this city, on the 9th instant, a business committee consisting of Messrs. Barber, of Georgia; Bogy, of St. Louis; Nixon, of New Orleans; Norvell, of Lynchburg; Crichton and Perot, of Baltimore, and Skiddy, of New York, was raised to make a thorough investigation into the affairs of the company and recommend such action on the part of the stockholders as in their judgment would promote the interests of the best company. After a most searching and laborious examination of the condition and prospects of the company, the committee submitted an elaborate report, which was unanimously received and approved by the meeting, in which they recommend that to extricate the company from its present embarrassments, restore its credit, and ensure its success, the present subscribed stock of about four millions of dollars should be consolidated and reduced to one-fourth of its nominal amount, and that upon the payment by any stockholder of the aggregate sum of $25 on each share of his stock and the surrender of his scrip, "full paid stock," not liable to further calls and assessments, shall be issued to him in the proportion of one share of "full paid" for four shares of the present stock. This consolidation will reduce the present stock of the company to about one million of dollars "full paid"—will produce money enough to relieve the company of all its indebtedness,

and leave it in possession of all its valuable property, with a considerable sum of ready money in its treasury to prosecute its business.

The charter of the company fixes its capital at five millions, with power to increase it to ten millions, but requires one-third of the five millions to be actually subscribed.

Now, as the proposed consolidation of stock will reduce the capital stock below the required one-third, it is recommended to issue not less than six thousand shares of preferred eight per cent. stock, to be sold at par. As stated, these recommendations were unanimously approved by the meeting; and a committee was appointed to go to New York and negotiate a sale there of as much of this preferred stock as practicable. Mr. Barber, the chairman, and several members of the committee have returned, and at an adjourned meeting of stockholders, held at the Exchange Hotel in this city last evening, made a favorable report of their progress in the object of their mission to New York. Whereupon the stockholders agreed to adjourn their meeting till Monday, the 29th instant, at the same place. And in view of the fact that the whole of the preferred stock may not be taken in New York, it was

"*Resolved*, That a committee of three stockholders be appointed by the chairman of this meeting, in each town and city where the stock of the company is held, to solicit subscriptions to the preferred stock, and report to the adjourned meeting."

By virtue of this resolution, you are hereby appointed a committee for ———— ————, and earnestly requested to obtain subscribers to the preferred stock, and report their names and amount of subscriptions obtained, previous to the meeting, to me, on or before the 29th instant, in order that the same may be laid before the meeting of stockholders at that time; and then continue your efforts as long as successful.

I respectfully suggest the following form of subscription to the preferred stock, and a certificate to be signed by you as a committee.

I am, very respectfully, your ob't servant,

JOSEPH R. ANDERSON,
Chairman.

SUBSCRIPTION TO PREFERRED STOCK OF THE NATIONAL EXPRESS & TRANSPORTATION COMPANY.

It being proposed to consolidate the present stock of the National Express & Transportation Company, at not over 25 per cent.

of its par value, and issue not less than six thousand shares of preferred 8 per cent. stock of said company, we, the undersigned, do agree and bind ourselves, our heirs, &c., to subscribe for and take the number of shares of such preferred stock opposite our respective names, and pay for the same in such sums or instalments as may be required by said company, till the full amount of one hundred dollars per share is paid up. But this subscription is not to be valid and binding till at least six thousand shares of such stock are subscribed for by parties solvent and able to pay, nor unless the consolidation of the present stock is effected.

Witness our hands and seals, this —— day of ———, 1866.

Name of Subscribers.	No of Shares.	Amount
[Seal.]		$

We, the undersigned committee, do certify that we have procured the foregoing subscriptions, and know the subscribers, and believe them able to comply with the terms of their subscription.

} Committee.

Exhibit B. & O. R. R. with

Dr. The National Express Company in account

Date.	Account of.					Items.	Amount.
1866.							
March 31.	To tonnage for	March,	1866,	M. S.,	$4,596 50		
" "	" " "	"	"	N. W. Va.,	678 85		
" "	" " "	"	"	W. B.,	3,405 17		
							$8,680 52
April 30.	" " "	April,	"	M. S.,	4,338 90		
" "	" " "	"	"	N. W. Va.,	825 46		
" "	" " "	"	"	W. B.,	1,847 21		
							7,011 57
May 31.	" " "	May,	"	M. S.,	6,756 50		
" "	" " "	"	"	N. W. Va.,	1,770 68		
" "	" " "	"	"	W. B.,	1,802 70		
							10,329 88
June 30.	" " "	June,	"	M. S.,	9,767 25		
" "	" " "	"	"	N. W. Va.,	2,994 45		
" "	" " "	"	"	W. B.,	2,053 92		
							14,815 62
July 31.	" " "	July,	"	M. S.,	} 12,784 72		
" "	" " "	"	"	N. W. Va.,			
" "	" " "	"	"	W. B.,	2,064 01		
							14,848 73
Aug. 31.	" " "	August,	"	M. S.,	12,219 12		
" "	" " "	"	"	W. B.,	2,151 14		
" "	" " "	May, June & July,	"	W. & P.,	1,952 31		
							16,322 57
Sept. 30.	" " "	September,	"	M. S.,	9,955 25		
" "	" " "	"	"	W. B.,	1,940 18		
							11,895 43
Oct. 31.	" " "	October,	"	M. S.,	3 25		
" "	" " "	"	"	W. B.,	50 00		
							53 25
							$83,957 57

1866.							
	To balance brought forward,						41,432 38
Jan. 1, 1867.	" int. 173 d's from July 12, '66, on $41,290.63 above bal. reduc. by cr.						1,190 54
1868.	" " 365 " "	Jan. 1, '67,	"	42,481.17			2,584 27
1869.	" " 366 " "	" '68,	"	45,065.44			2,584 27
1870.	" " 365 " "	" '69,	"	47,814.43			2,908 71
1871.	" " 365 " "	" '70,	"	50,723.14			3,085 66
1872.	" " 365 " "	" '71,	"	53,808.80			3,273 37
1873.	" " 366 " "	" '72,	"	57,082.17			3,482 01
1874.	" " 365 " "	" '73,	"	60,564.18			3,684 32
1875.	" " 365 " "	" '74,	"	64,248.50			3,908 45
1876.	" " 356 " "	" '75,	"	68,156.95			4,146 21
							$72,444 91

1876.		
Jan'y 1.	To balance brought forward,	$72,303 16

Deposition of J. T. Snowden.

with the Baltimore and Ohio Railroad Co. Cr.

Date.	Account of.		Items.	Amount.
1866.				
March 20.	By cash March,	M. S.,		$1,546 46
" 31.	" "	W. B.,	$1,128 00	
" "	" "	M. S.,	1,344 53	
" "	" "	N. W. Va.,	203 02	
				2,675 55
May 17.	" " and vouchers on acc.,		1,025 00	
" "	" "		7,500 00	
				8,525 00
June 12.	" "		7,558 19	
" "	" "	W. B.,	781 28	
				8,339 47
" 20.	" "			4,933 59
July 11.	" " draft paid,			2,500 00
" 17.	" "			5,000 00
Aug. 25.	" "		3,522 01	
" "	" "	W. B.,	657 80	
				4,179 81
Sept. 10.	" "		4,038 78	
" "	" "		784 46	
" "	" " error being difference in acc. as rend.,		2 07	
				4,825 31
" "	" " balance per acc. rendered,			41,432 38
				$83,957 57
1866.				
July 12.	By int. 20 days, 6 per cent. per annum allowed on $42,525 19, paid as per cr's above shown, in advance, on average June, 22, 1866, the average date of dr's above being July 12, 1866,			141 75
1876.				
Jan'y 1.	Balance carried forward,			72,303 16
				$72,444 91

EXHIBIT "B. C. B.," FILED WITH DEP'N OF ED. PRICE.

National Express & Transportation Co.,
In account with Bank of Commerce, Baltimore.

1867.			
Jan'y 24	To balance of ledger account with interest to date as per statement rendered,		$6,726 07
	To the following notes and acceptances discounted for them at sundry times, viz.:		
"	C. L. Stemnon's note, dated June 27th, 1866, 90 d., endorsed J. E. Johnston & J. V. H. Allen, Treas.,	507 65	
	Protest,	2 28	
	Interest to date,	10 03	
			519 96
	Dis. Aug. 25, '66. Dom. O. B.		
"	W. P. Moore's note, dated July 1st, '66, 90 d., endorsed by John J. Kelly, V. Pres't,	400 00	
	Protest,	2 00	
	Interest to date,	7 64	
			409 64
	Dis. Aug. 25, '66. Foreign O. Bk.		
"	John B. Minor's note, dated Aug'st 25, '66, endorsed by J. S. Davis & J. V. H. Allen, Tr.,	251 87	
	Protest,	2 25	
	Interest to date,	4 49	
			258 61
	Dis. Sept. 15, '66. F. O. B.		
"	Michael Cunningham's note, dated Aug. 4, '66, 120 d., endorsed by John O'Conner & J. V. H. Allen, Treas.,	255 12	
	Protest,	3 25	

	Interest to date,	2 15	
			260 52
	Dis. Aug. 15, '66. F. O. B.		
	For'd,		8,174 80
1867.			
	Amount brought forward,		8,174 80
Jan'y 24—	T. G. Barrett's note, dated Aug. 5th, 1866, 120 d., endorsed by Barrett, Carter & Co., and J. V. H. Allen, Tr.,	253 88	
	Protest,	3 25	
	Interest to date,	2 10	
			259 23
	Dis. Aug. 15, '66. F. O. B.		
"	Barrett, Carter & Co., note dated Aug. 5th, '66, 120 d., endorsed by T. G. Barrett & J. V. H. Allen, Tr.,	507 75	
	Protest,	3 25	
	Interest to date,	4 17	
			515 17
	Dis. Aug. 15th, '66. F. O. B.		
"	Joseph Hatton's note, dated Aug. 6, '66, 120 d., endorsed by S. B. Simmons & J. V. H. Allen, Tr.,	225 12	
	Protest,	3 25	
	Interest to date,	2 06	
			260 43
	Dis. Aug. 15th, '66 F. O. B.		
"	S. B. Simmons's note, dated Aug. 6, '66, 120 d., endorsed by Jos. Hatton & J. V. H. Allen, Tr.,	255 12	
	Protest,	3 25	
	Interest to date,	2 06	
			260 43
	Dis. Aug. 15th, '66. F. O. B.		
"	John Fox's note, dated Aug. 6, '66, 120 d., endorsed by Jos. Hatton & J. V. H. Al-		

	len, Tr.,	51 03	
	Protest,	3 25	
	Interest to date,	43	
			54 71
	Dis. Aug. 15, '66. F. O. B.		
			$9,524 77
"	G. P. Curry's note, dated Aug. 9th, '66, 120 d., endorsed by R. F. Curry and J. V. H. Allen, Tr.,	1,020 50	
	Protest,	3 25	
	Interest to date,	7 68	
			1,031 43
	Dis. Aug. 15th, '66. F. O. B.		
"	W. A. Burke's acceptance, dated Aug. 10th, '66, 4 mos., endorsed M. G. Harman, Hugh W. Sheffey and J. V. H. Allen, Treas'r,	50 00	
	Protest,	2 20	
	Interest to date,	36	
			52 56
	Dis. Aug. 15th, '66. F. O. B.		
"	J. V. H. Allen's dft. on Wm. Allen, dated Aug. 10, '66, 4 mos., endorsed M. G. Harman, Hugh W. Sheffey and J. V. H. Allen, Tr.,	50 00	
	Protest,	2 20	
	Interest to date,	36	
			52 56
	Dis. Aug. 15th, '66. F. O. B.		
"	Jed. Hotchkiss' acceptance, dated Aug. 10th, '66, 4 mos., endorsed M. G. Harman, Hugh W. Sheffey and J. V. H. Allen, Tr.,	125 00	
	Protest,	2 20	
	Interest to date,	89	
			128 09
	Dis. Aug. 15th, '66. F. O. B.		
"	W. H. Farris' acceptance, dated Aug. 10th, '66, 4 mos.,		

	endorsed M. G. Harman, Hugh W. Sheffey and J. V. H. Allen, Tr.,	125 00	
	Protest,	2 20	
	Interest to date,	89	
			128 09
	Dis. Aug 15th, '66. F. O. B.		
	Forward,		10,917 50
	Amount brought for'd,		10,917 50
1867.			
Jan'y 24—	J. S. Byer's acceptance, dated Aug. 10th, '66, 4 mos., endorsed M. G. Harman, Hugh W. Sheffey and J. V. H. Allen, Tr.,	250 00	
	Protest,	2 20	
	Interest to date,	1 76	
			253 96
	Dis. Aug. 15th, '66. F. O. B.		
"	Wm. Frazier's acceptance, dated Aug. 10th, '66, 4 mos., endorsed M. G. Harman, Hugh Sheffey and J. V. H. Allen, Tr.,	250 00	
	Protest,	2 20	
	Interest to date,	1 76	
			253 96
	Dis. Aug. 15th, '66. F. O. B.		
"	J. M. McCue's acceptance, dated Aug 10th, '66, 4 mos., endorsed M. G. Harman, Hugh W. Sheffey and J. V. H. Allen, Treas.,	250 00	
	Protest,	2 20	
	Interest to date,	1 76	
			253 96
	Dis. Aug. 15th, '66. F. O. B.		
"	E. W. Bayly's acceptance, dated Aug. 10th, '66, 4 mos., endorsed M. G. Harman, Hugh W. Sheffey and J. V. H. Allen, Tr.,	250 00	

	Protest,	2 20	
	Interest to date,	1 76	
			253 96
	Dis. Aug. 15th, '66. F. O. B.		
"	B. B. Donnaghi's acceptance, dated Aug. 10th, '66, 4 mos., endorsed M. G. Harman, Hugh W. Sheffey and J. V. H. Allen, Treas.,	250 00	
	Protest,	2 20	
	Interest to date,	1 76	
			253 96
	Dis. Aug. 15th, '66. F. O. B.		
			12,187 30
1867.			
	Amount brought for'd,		12,187 30
Jan'y 24—	Thos. J. Michie's acceptance, dated Aug. 10th, '66, 4 mos., endorsed M. G. Harman, Hugh W. Sheffey, and J. V. H. Allen, Treas.,	250 00	
	Protest,	2 20	
	Interest to date,	1 76	
			253 96
	Dis. Aug. 15th, '66. F. O. B.		
	Wm. M. Laughlin's acceptance, dated Aug. 10, '66, 4 mos., endorsed M. G. Harman, Hugh W. Sheffey, and J. V. H. Allen, Treas'r,	500 00	
	Protest,	2 20	
	Interest to date,	3 51	
			505 71
	Dis. Aug. 15th, '66. F. O. B.		
"	Robt. J. Glendy's acceptance, dated Aug. 10th, '66, 4 mos., endorsed M. G. Harman, Huge W. Sheffey, and J. V. H. Allen, Tr.,	500 00	
	Protest,	2 20	
	Interest to date,	3 51	
			505 71
	Dis. Aug. 15th, '66. F. O. B.		

"	J. J. A. Trotter's acceptaace, dated Aug. 10th, '66, 4 mos., endorsed M. G. Harman, Hugh W. Sheffey, and J. V. H. Allen, Tr.,	1,050 00	
	Protest,	2 20	
	Interest to date,	7 36	
			1,059 56
	Dis. Aug. 15th, '66. F. O. B.		
	Forward,		14,512 24
1867.			
	Amount brought forward,		14,512 24
Jan'y 24—	Wm. H. Farris' acceptance, dated Aug. 10th, '66, 4 mos., endorsed M. G. Harman, Hugh W. Sheffey, and J. V. H. Allen, Treas.,	1,125 00	
	Protest,	2 20	
	Interest to date,	7 89	
			1,135 09
	Dis. Aug. 25th, '66. F. O. B.		
"	J. M. Barton's note, dated Aug. 17th, '66, 4 mos., endorsed J. V. H. Allen, Treas'r,	255 00	
	Protest,	1 98	
	Interest to date,	1 50	
			258 48
	Dis. Aug. 25th, '66. F. O. B.		
"	H. J. Rogers' note, dated Aug. 17th, '66, 4 mos , endorsed J. V. H. Allen, Treas.,	255 00	
	Protest,	1 98	
	Interest to date,	1 50	
			258 48
	Dis. Aug. 25th, '66. F. O. B.		
"	W. W. Gilmer's note, dated Aug. 25th, '66, 120 d., endorsed Jno. W. Godwin and J. V. H. Allen, Tr.,	102 00	
	Protest,	2 25	
	Interest to date,	50	
			104 75
	Dis. Sept. 15th, '66. F. O. B.		

	J. M. Godwin's note, dated Aug. 25th, '66, 120 d., endorsed W. W. Gilmer and J. V. H. Allen, Tr.,	127 50	
	Protest,	2 25	
	Interest to date,	63	
			130 38
	Dis. Sep. 15th, '66. F. O. B.		
			16,399 42
1867.			
	Amount brought forward,		16,399 42
Jan. 24—	J. Minor's note, dated Aug. 25, '66, 120 d., endorsed Dabney Minor & J. V. H. Allen, Tr.,	127 50	
	Protest,	2 25	
	Interest to date,	63	
			130 38
	Dis. Aug. 25, '66. F. O. B.		
	J. R. Wood's note, dated Aug. 25, '66, 120 d., endorsed M. G. Harman, Vice-Pres't,	1,010 00	
	Protest,	2 14	
	Interest to date,	4 89	
			1,017 03
	Dis. Aug. 25, '66. F. O. B.		
	Wm. C. Butler's note, dated Aug. 25, '66, 4 mos., endorsed Thos. F. Wingfield, Jr., and J. V. H. Allen, Tr.,	50 75	
	Protest,	2 25	
	Interest to date,	24	
			53 24
	Dis. Sept. 15, '66. F. O. B.		
"	Horace W. Jones, dated Aug. 25, '66, 4 mos, endorsed Jas. D. Jones and J. V. H. Allen, Tr.,	51 03	
	Protest,	2 25	
	Interest to date,	24	
	Dis. Sept. 15, '66. F. O. B.		

"	Wm. A. Watson's note, dated Aug. 25, '66, 4 mos., endorsed Wm. A. Watson & J. V. H. Allen, Tr.,	102 00	
	Protest,	2 13	
	Interest to date,	47	
			104 60
	Dis. Sep 15. F. O. B.		
	Forward,		17,758 19
1867.			
	Amount brought forward,		17,758 19
Jan. 24—	A. Benson's note, dated Aug. 25, '66, 4 mos., endorsed H. Benson & J. V. H. Allen, Tr.,	102 00	
	Protest,	2 25	
	Interest to date,	47	
			104 72
	Dis. Aug. 25, '66. F. O. B.		
"	Dabney Minor's note, dated Aug. 25, '66, 4 mos., endorsed J. Minor & J. V. H. Allen, Tr.,	127 50	
	Protest,	2 25	
	Interest to date,	59	
			130 34
	Dis. Aug. 25, '66. F. O. B.		
"	John Dooley's note, dated (Aug.) July 25, '66, 5 mos., endorsed J. V H. Allen, Tr.,	127 50	
	Protest,	1 98	
	Interest to date,	58	
			130 06
	Dis. Aug. 25, '66. F. O. B.		
"	G. T Jones' note, dated Aug. 25, '66, 4 mos., endorsed R. K. Flannagan & J. V. H. Allen, Tr.,	255 00	
	Protest,	2 25	
	Interest to date,	1 16	
			258 41
	Dis. Sept. 15, '66. F. O. B.		

"	R. K. Flannagan's note, dated Aug. 25, '66, 4 mos., endorsed G. T. Jones & J. V. H. Allen, Tr.,	255 00	
	Protest,	2 25	
	Interest to date	1 16	
			258 41
	Dis. Sept. 15, '66. F. O. B.		
	Forward,		18,640 13
1867.			
	Amount brought forward,		18,640 13
Jan. 24—	E. S. Hutter's note, dated Aug. 27, '66, 4 mos., endorsed J. R Hutter & J. V. H. Allen, Tr.,	387 60	
	Protest,	2 08	
	Interest to date,	1 76	
			391 44
	Dis. Aug. 25, '66. F. O. B.		
"	B. C. Flannagan's note, dated Aug. 25, '66, 4 mos., endorsed B. C. Flannagan & J. V. H. Allen, Tr.,	510 00	
	Protest,	2 13	
	Interest to date,	2 30	
			514 43
	Dis. Sept. 15, '66. F. O. B.		
"	J. W. Lipop's note, dated Aug. 25, '66, 4 mos., endorsed S. M. Keller & J. V. H. Allen, Tr.,	510 00	
	Protest,	2 25	
	Interest to date,	2 30	
			514 55
	Dis. Sept. 15, '66. F. O. B.		
"	Wm. Daniel, Jr., note dated Aug. 25, '66, 4 mos., endorsed J. V. H. Allen, Tr.,	2,550 00	
	Protest,	1 98	
	Interest to date,	11 48	
			2,563 46
	Dis. Aug. 25, '66. F. O. B.		

"	J. D. Imboden's note, dated Aug. 25, '66, 4 mos., endorsed J. V. H. Allen, Treas.,	3,570 00	
	Protest,	2 28	
	Interest to date,	16 07	
			3,588 35
	Dis. Sept. 15, '66. F. O. B.		
	Forward,		$26,212 36
1867.			
	Amount brought forward,		26,212 36
Jan. 24—	Thos. Opie's acceptance, dated Aug. 10, '66, 4 mos., endorsed M. G. Harman and J. V. Allen, Tr.,	300 00	
	Protest,	2 28	
	Interest to date,	2 11	
			304 39
	Dis. Aug. 15, '66 F. O. B.		
			$26,516 75

Credits.

1867.			
Feb'y 5—	By cash,	$ 304 98	
Nov. 1—	" do.,	1,000 00	
" 26—	" do.,	145 92	
1868.			
Jan. 13—	" do.,	823 81	
June 30—	" do.,	4,227 47	
Aug. 18—	" do.,	284 97	
Sept. 21—	" do.,	414 09	
Octo. 23—	" do.,	109 38	
1869.			
Ap'l 16—	" do.,	59 28	
July 8—	" do.,	62 87	
Aug. 23—	" do.,	1,428 28	
1871.			
July 13—	" do.,	121 33	
Sept. 2—	" do.,	54 69	
			9,037 07
			$17,479 68

Due by average, July 4, 1868.
Interest from that date.

EXHIBIT "P. W. B." WITH DEP'N OF ENOCH PRATT.

Philadelphia, Sept. 18th, 1868.

National Express and Transportation Co.,
To Philadelphia, Wilmington & Balto. R. R. Co.

For amount due as per protested drafts as follows:

1866.			
Sept. 14—1 day's sight,	$1,901 60		
Protest,	2 28		
Interest, 2 years,	228 46		
		$2,132 34	
1866.			
Sept. 21—1 day's sight,	$1,643 20		
Protest,	2 31		
Interest 1 year, 11 months, 23 days,	195 53		
		1,841 04	
1866.			
Sept. 29—1 day's sight,	$1,597 60		
Protest,	2 33		
Interest 1 year, 11 months, 14 days,	187 73		
		1,787 66	
1866.			
Oct'r 13—1 day's sight,	$1,769 60		
Protest,	2 33		
Interest 1 year, 11 mos.,	203 77		
		1,975 70	
			$7,736 74

H. F. KENNY, Esq., Supt.:

Baltimore, Oct. 23rd, 1866.

Please take notice that S. P. Wiltbank's draft, dated Philadelphia, Oct. 13th, 1866, payable at one day's sight to the order of H. F. Kenny, Supt., for seventeen hundred and sixty-nine $\frac{60}{100}$ dollars, drawn on and accepted by Richard T. Allison, Esq., Cash., Baltimore, Md., due and by you endorsed, is delivered to me by the cashier of the National Farmers and Planters Bank of Baltimore for protest, and the same not being paid, payment therefor having been demanded and refused, is protested, and will be

returned to the said cashier, and that you are held liable for the payment thereof.

Yours, respectfully,

LEANDER WARREN, Notary Public,
No. 61 Second street (up stairs).

H. F. KENNY, Esq., Supt.:

Baltimore, Oct. 6th, 1866.

Please take notice that S. P. Wiltbank's draft, dated Philadelphia, Sept. 29th, 1866, payable at one day's sight to the order of H. F. Kenney, supt., for fifteen hundred and ninety-seven $\frac{60}{100}$ dollars, drawn on R. T. Allison, Esq., cashier Nat. Ex. & Trans. Co., Baltimore, Md. Due and by you endorsed, is delivered to me by the cashier of the National Farmers & Planters Bank of Baltimore, for protest, and the same not being paid, payment therefor have been demanded and refused, is protested, and will be returned to the said cashier, and that you are held liable for the payment thereof.

Yours respectfully,

LEANDER WARREN, Notary Public,
No. 61 Second street (up stairs).

H. F. KENNEY, Esq., Supt.:

Baltimore, Sept. 28th, 1866.

Please take notice that S. P. Wiltbanks' draft, dated Philadelphia, sept. 21st, 1866, payable at one day's sight to order of H. F. Kenny, supt., for sixteen hundred and forty-three $\frac{20}{100}$ dollars, drawn on R. F. Allison, Esq., cashier Nat'l Ex. & Trans. Co., Baltimore, Md., and by you endorsed, is delivered to me by the cashier of the Farmers and Planters Bank of Baltimore for protest, and the same not being paid, payment therefor having been demanded and refused, is protested, and will be returned to the said cashier, and that you are held liable for the payment thereof.

Yours respectfully,

LEANDER WARREN, Notary Public,
No. 61 Second street (up stairs).

H. F. KENNEY, Supt.:

Baltimore, Sept. 21, 1866.

Please take notice that S. P. Wiltbank's bill of exchange dated

Philadelphia, Sept. 14, 1866, payable at one day's sight to order of H. F. Kenney, supt., for nineteen hundred and one $\frac{60}{100}$ dollars, drawn on R. T. Allison, cash., Baltimore, Md., and by you endorsed, is delivered to me by the cashier of the Farmers and Planters Bank of Baltimore for protest, and the same not being paid, payment therefor having been demanded and refused, is protested, and will be returned to the said cashier, and that you are held liable for the payment thereof.

Yours respectfully,

LEANDER WARREN, Notary Public,
No. 61 Second street (up stairs).

EXHIBIT "W. C. V. M. & G. S. No. 1," RETURNED WITH COM'RS REPORT.

STATE OF VIRGINIA—*City of Richmond, to-wit:*

At a court of hustings held for the city of Richmond, at the court-house, on the 23d day of April, one thousand eight — and sixty-eight—

The Orange and Alexandria Railroad Company, Plt.,
against
The National Express and Transportation Company, Dft., } In case.

This day came the plaintiff by its attorney, and neither party requiring a jury, it is considered by the court that the plaintiff recover against the defendant three thousand one hundred and forty-four dollars and seventy cents, with interest thereon, to be computed after the rate of six per centum per annum, from the 1st day of December, 1866, till paid, and the plaintiff's costs in this behalf expended. Plaintiff's costs, $7.60.

In testimony that the foregoing is a true copy from the records of the said court, I, Andrew Jenkins, clerk of the hustings court of the said city, have hereunto set my hand and affixed the seal of the said court, this 13th day of May, 1876.

[Seal.] ANDREW JINKINS, Cl'k.

STATE OF VIRGINIA—*City of Richmond, to-wit:*

I, Alexander B. Guigon, judge of the hustings court of the city aforesaid, do hereby certify that Andrew Jenkins, whose name is

signed to the foregoing certificate, is now, and was at the time of signing the same, clerk of the hustings court of the city of Richmond, duly elected and qualified according to law; that his signature is genuine, and that all of his official acts are entitled to full faith and credit.

Given under my hand, at the city of Richmond, this 13th day of May, 1876.

A. B. GUIGON,
Judge of the hustings court of the city of Richmond.

STATE OF VIRGINIA—*City of Richmond, to wit:*

I, Andrew Jenkins, clerk of the hustings court of the city of Richmond, in the State aforesaid, do hereby certify that Alexander B. Guigon, whose name is signed to the foregoing certificate, is now, and was at the time of signing the same, judge of the hustings court of the city of Richmond, duly qualified according to law; that his signature is genuine, and that all of his official acts are entitled to full faith and credit.

Witness my hand, this 13th day of May, 1876.

ANDREW JINKINS, Clerk.

EXHIBIT "G. McM.," RETURNED WITH COM'RS REPORT.

Ohio county circuit court, May term, 1867:

George McMasters,
v.
The Nat'l Express and Trans'n Co., } In assumpsit.

This day came the parties by their attorneys, and thereupon came a jury, to wit: William Clohan, Robert Hamilton, Shep. Thomberg, Daniel Snyder, J. S. Jones, Albert Waite, William Holliday, Holston Harden, Benjamin F. Coleman, Hugh Sterling, John Webb and Barnard Higgins, who, being elected, tried and sworn to well and truly try the issue joined, and having heard the evidence and argument of counsel, upon their oath do say, "We, the jury, find for the plaintiff, and assess the damages at $1,385.96, with interest from first September, 1866. Wm. Clohan." Whereupon, it is considered by the court that the plaintiff recover against the defendant the damages assessed as aforesaid, with interest from 1st Sept., 1866, and his costs by him about his suit in this behalf expended.

COPY OF EXECUTION.

THE STATE OF WEST VIRGINIA,

To tthe Sheriff of Ohio County—Greeting:

We command you, that of the goods and chattels of The National Express and Transportation Company, late in your bailiwick, you cause to be made the sum of 1,385 dollars and 96 cents, with legal interest thereon from the first of September, 1866, till payment, which George McMasters, lately in our circuit court for the county of Ohio, has recovered against it, as well for his damages, which he sustained by reason of it, the said National Express and Transportation Company, not performing certain promises and assumptions to the said George McMasters by the said National Express and Transportation Company, lately made as for interest on those damages; also, the sum of 35 dollars and 61 cents, which to the said G. McMasters, in the same court, were adjudged for his costs in that suit expended, whereof the said company is convicted, as appears to us of record, and how you shall have executed this writ make known at the clerk's office of our said court at rules to be held therein on the last Tuesday in June, 1867, next. And have then there this writ.

Witness Michael J. Brienig, clerk of our said court, at the courthouse of our said county, in the city of Wheeling, this 31st day of May, 1867, and in the 4th year of the state of West Virginia.

MICHAEL J. BREINIG,
Clerk of the Circuit Court of Ohio county.

SHERIFF'S RETURN.

By virtue of these executions, received by me on May 31st, 1867, I levied upon the following property belonging to the National Express and Transportation—23 sets double harness, 23 sets single harness, 1 top wagon, 1 wagon without top, 2 parts of sets of single harness, 36 feet gum hose. I advertised the property enumerated above according to law, designating the time and place of sale, and sold same for cash to the following parties, they being the highest and best bidders, June 12, 1867.

To	James McGannon,	1	set	single	harness,	$ 23 00
"	Geo. McMasters,	5	"	"	"	130 00
"	Robt. Higgins,	12	"	"	"	288 00
"	Peter Denneger,	1	"	"	"	26 00
"	Otto Hess,	1	"	"	"	29 00

" Thos. Ratcliff,	3	" " "	75 00
	23		$571 00
To Otto Hess,	1	sett double harness,	27 00
" Peter Denneger,	1	" " "	32 50
" Robt. Higgins,	11,		418 00
" Geo. McMasters,	8,		240 00
" Chandler,	1,		30 00
" Ridgely Jacob,	1,		28 50
	23		$1,347 00
To John Matle,	1	wagon,	121 00
" S. Horkeimer,	1	wagon,	140 00
	2		$1,608 00
To. S. Horkeimer,	1	pt. sett harness,	6 25
" Seller,	½	" "	6 50
			$1,620 75
To Geo. McMasters, 36 feet hose,			14 76
Total,			$1,635 51

After deducting costs, sixty-six ——— and thirty-six cents; sheriff's commissions, forty-one dollars and seventy cents; storage, &c., nine dollars and fifty cents; water tax, twenty-seven dollars, leaves a balance of fourteen hundred and ninety dollars and ninety-five cents, which I distributed *pro rata*, to wit: Robt. Higgins, eight hundred and thirty-six dollars and ninety-two cents; Geo. McMasters, six hundred and fifty-four dollars and three cents, June 12th, 1867.

WM. L. McPHAIL, D. S., for
THOS. J. CAMPBELL, S. O. C.

A copy.

Teste,

MICHAEL J. BREINIG, Clerk, &c.

STATE OF WEST VA.—*Ohio county, ss.*

I, E. H. Caldwell, judge of the first judicial circuit of the state aforesaid, do certify that Michael Breinig, who hath attested the

foregoing, is clerk of the circuit court of Ohio county and State aforesaid.

Given under my hand this 22d day of July, 1867.

E. H. CALDWELL.

Court costs of the within named suit,	$35 61
Commissions,	38 78
City water tax,	13 50
Storage for wagons, &c.,	4 50
	$92 39

Teste:

MICHAEL J. BREINIG, Clerk.

I, Geo. McMasters hereby agree to pay to Slinghoff & Slinghoff & S. S. Pleasants, attorneys-at law, one-half of all they may collect of my claims against the National Express and Transportation Co. (being balance due on a judgment against said Express Co., amounting, *principal*, to $1,385.96, and costs, $35.61, with interest from Sept. 1, 1866, on which I have received the sum of $654.03, on June 12, 1867), said attorneys to hold me harmless from all costs and expenses of prosecuting said claims.

GEORGE McMASTERS.

Mannington, W. Va., April 9th, 1876.

EXHIBIT LOUIS STIX & Co.,

Returned with Com's Report.

Cincinnati, November 15th. 1866.

The National Express & Transportation Co.
To Louis Stix & Co., Dr.
For rent of building, 129 W. 3d st., $500 00
The same being balance due on lease and in full settlement.
Received payment.

Endorsed on back.

I certify that this expenditure was necessary to the proper conducting of the business of the company.

J. F. WINSLOW,
Supt. 3d division N. E. & T. Co.
and Managing Agent.

Cincinnati, April 7, 1876.

Pay the within claim to the order of Louis Stix & Co.

STATE OF OHIO—*Hamilton county, city of Cincinnati, ss.*

By this public instrument, be it remembered, that on the seventh day of April, one thousand eight hundred and seventy-six, before me, the subscriber, Victor Abraham, a notary public in and for the county and State aforesaid, appointed by the governor of the State of Ohio, to take proof and acknowledgment of deeds and other instruments to be used or recorded in the said State of Ohio, and to administer oaths and affirmations, take depositions, &c., personally appeared Nathan Stix, of the city of Cincinnati, Ohio, who, being by me duly sworn according to law, did depose and say: That he is a member of the firm of Louis Stix & Co., of the city of Cincinnati, State of Ohio, which said firm is composed of the following named persons, viz.: Louis Stix, Caroline Swartz, and affiant, that the foregoing claim, marked "A," is correctly made out from the books of the said Louis Stix & Co., that the said charges were made in said books at or about the time of their respective dates; that the claim for which said charges were made, as shown by said account, is for balance of rent of premises in the city of Cincinnati, rented by the firm of Louis Stix & Co., to the National Express & Transportation Co., a corporation; that the charges are correct and the said account just and true, as stated to the best of deponent's knowledge and belief; that the demand as shown by said account, is just, due and unpaid; that the same, or any part thereof, has not been paid or settled by the said corporation, The National Express & Transportation Co., nor by any person or persons for it, except as may be shown by said account "A"; that there is no just offset known to deponent against said demand; that all just and legal credits have been given to said account; that there is now due (as aforesaid) to deponent's said firm, from said corporation, The National Express & Transportation Co., the sum of five hundred dollars, as certified in said Exhibit A and approved by said corporation's agent, exclusive of any payment or setoff; that no usurious interest has been charged, and that lawful interest is due thereon from the 15th day of November, 1866, and that deponent's said firm does not hold any collateral or personal security, or satisfaction whatever to secure said debt, or any portion thereof.

NATHAN STIX.

Sworn to before me, and subscribed in my presence, the date aforesaid.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal the year, month and day first written.

[Seal.] VICTOR ABRAHAM,
Notary Public,
Hamilton county, Ohio.

16 Masonic Temple, corner Third & Walnut sts.,
Cincinnati, Ohio.

EXHIBIT WITH COM'R'S REPORT.

In Richmond Hustings Court Clerk's Office, September 20th, 1866—

John B. Baldwin, Pl't.,
against
The National Express and Transportation Company, D'f'ts., } In case.

This day came the plaintiff by his attorneys, and the defendants by J. D. Imboden, their attorney in fact, duly constituted by letter of attorney, and the said defendants, by their said attorney, acknowledged the plaintiff's action for two thousand dollars and the costs of suits. Whereupon, it is considered that the plaintiff recover against the defendants the said sum of two thousand dollars, with interest thereon, to be computed after the rate of six per centum per annum from this day until paid, and his costs by him in this behalf expended.

A copy—Teste:

ANDREW JINKINS, C'lk.

Plaintiff's costs, $—

Subject to the following credits: $775.17 and $251.18 of Dec'r 31st, 1866, and 132.34 of Jan'y 17, 1867.

Teste:

ALFRED SHEILD,
Cl'k Cir. Court City of Richmond.

EXHIBIT WITH COM'R'S REPORT.

In Richmond Hustings Court, Clerk's Office, September 20th, 1866—

J. D. Imboden, Pl't,
against
The National Express and Transportation Company, D'f't, } In case.

This day came the plaintiff by his attorneys, and the defendants by L. H. Page and W. A. Maury, their attorneys in fact, duly constituted by letters of attorney, and the said defendants by their attorneys aforesaid acknowledged the plaintiff's action for fourteen hundred and fifty-six dollars and fifty-six cents and the costs of suit. Whereupon it is considered that the plaintiff recover against the defendants the said sum of fourteen hundred and fifty-six dollars and fifty-six cents, with interest thereon, to be computed after the rate of six per centum per annum from this day until paid, and his costs by him about his suit in this behalf expended.

A copy—Teste:

ANDREW JINKINS, Cl'k.

Pl't's costs, $———.

Subject to a credit of $565.09, and of $534.90, and $233.20.

Teste:

ALFRED SHEILD,
Cl'k Cir. C't City of Richmond.

EXHIBIT WITH COM'S REPORT.

In Richmond Hustings Court Clerk's Office,
September 20, 1866.

Legh R. Pagh and William A. Maury, partners in the practice of the law, under the style and firm of Page & Maury, Pl'ts,
against
The National Express and Transportation Company, Def'ts, } In case.

This day came the plaintiffs by their attorneys, and the defendants by John D. Imboden, their attorney in fact, duly constituted by letter of attorney, and acknowledged the plaintiff's action for twenty-four hundred dollars and the costs of suit. Whereupon it is considered that the plaintiff recover against the said defendant the said sum of twenty-four hundred dollars, with interest thereon, to be computed after the rate of six per centum per annum, from

this day until paid, and their costs by them about their suit in this behalf expended.

A copy—Teste:

ANDREW JINKINS, Cl'k.

Subject to the following credits: $929.79 and $300.69, of Dec. 31, 1866, and $158.83, of Jan'y, 17, 1867.

Teste:

ALFRED SHEILD,
Cl'k Circuit Ct. City of Richmond.

EXHIBIT WITH COM'R'S REPORT.

In Richmond Hustings Court clerk's office, September 20th, 1865:

Robert Ould and Isaac H. Carrington, partners in the practice of the law under the name and style of Ould & Carrington, Pl'ts.
against
The National Express and Transportation Company, D'f'ts. } In case.

This day came the plaintiffs by their attorneys, and the defendants by L. R. Page and W. A, Maury, their attorneys in fact, duly constituted by letters of attorney, and the said defendants by their attorneys aforesaid acknowledged the plaintiffs' action for two housand dollars and the costs of suit. Whereupon it is considered that the plaintiffs recover against the defendant the said sum of two thousand ——, with interest thereon, to be computed after the rate of six per centum per annum, from this day until paid, and their costs by them about their suit in this behalf expended.

A copy—Teste: ANDREW JINKINS, Cl'k.

Plaintiffs' costs, $———.

Subject to a credit of $775.17.

Teste:

ALFRED SHEILD,
Cl'k Cir. Ct. City of Richmond.

EXHIBITS WITH DEP'N OF L. R. SMOOT.

No. 1.

District of Columbia.

1. S. D. Childs, driver,	C		75 00
2. John Biddle, "	G		50 00
3. "National Intelligencer," advertising, Jan. 13, '75, to Jno. F. Coyle, Washington, D. C.,			124 19
4. E. R. Cunningham, L & D,	T		12 75
5. H. P. Gilbert & Co., 1 wagon cover,	G		12 00
6. Publisher of "Chronicle," advertising, $343 G, claimed	"		259 88
7. John Farrell, lumber,	"		19 48
8. A. J. Joyce & Co., repairing wagon, G	"		87 57
9. J. W. Nairn & Bro., druggs &c., G	"		65 21
10. Thos. Ward & Thos. Kelly, bl'ksmithing,	G		33 00
11. Palmer & Sly, coal,	"		42 50
12. Jas. S. Tapham & Co., repairs of harness, G	"		29 32
13. R. P. Buford, " " wagons,	"		20 23
$249.19—C—$581.88 T. Total with C & T.			$831 07

Mississippi.

1. Oscar T. Keeler, ag't, Columbus, Miss., July 3, '74, & ag'n Oct. 14, '74, & to W. M. Keeler, 353 & 355 Canal st., New York, Jan'y 7, 1875.	C	$1,242 34

Alabama.

1. M. W. Hutcheson, ag't., Mobile, Ala.,		C	350 00
2. T. Titcomb, stationary, Montgomery, Ala., July 20, '74,		T	7 25
3 Henry St. Paul & Co., advertising, "Mobile Daily Times,"		G	25 00
4. James Conning, repairing watch,		"	5 00
5. Edward Schloss, L. & D.,	Mobile,	"	239 87
6. Petty & Sawyer, legal service,	"	"	640 00
7. "Mobile Daily Tribune," advertising	"	"	31 00
8. "Advertiser & Register," printing,	"	G "	187 50
$350—C—$3,135.62 T. Total C & T,		"	$1,485 62

9. Young & Words. L & D—Gold coin Eufala.

			old
Conant & Young, N. Y.,	T	2,000	2

Illinois.

1. Charles W. Field, ag't, Cairo, July 3, '74,	T	366	00
× M. W. Hutcheson, July 20, '74.			

No. 2.

Tennessee.

1. Sims & Hamilton, office rent, Chattanooga, G ×,	T	33	00
2. F. E. Mars, ag't,	C	214	40
$33—T—$214.40—C. Total T & C.,		$347	40
× Sent July 9, '74, to Sims & Hamilton.			

West Virginia.

1. R. A. Jeffrey, agent, Ellenbore,	C	28	00
2. J. Floyd McCulloh, messenger, Parkersburg, July 21, '74, $836.92, rend, Jan. 12, '67.		58	33
3. Robert Higgins, Harness, Wheeling, July 9, '74, & Geo. McMasters, $654.03, July 28, '74.		1,733	50
4. C. W. McMullin, repairing, &c., Parkersburg, July 21, '74,		5	57
5. Berger & Hoffman. L & D. Wheeling,		8	65
6. S. Downy, ag't, Piedmont, July 21, '74,	T	91	33
7. G. E. Leps, " New Creek,	"	40	50
8. James DuP. Fenton, Grafton, } Both to Fenton, G	"	100	00
9. S. E. Poor, clerk, do., } July 9, '74,	"	80	00
10. Sperdth & Inderriden, Loss & Damage,	"	14	50
11. J C Orr & Co., Stationary,	"	6	05
12. Walters & Kraft, Bl'ksmithing,	"	12	00
13 T. H. Logan & Co., Oil,	"	1	00
14. Bushfield, Wallace & Co., Oil & Putty,		1	10
15. J W. Houck, ag't, Piedmont, July 21, '74,		39	00
16. Hamilton & Nagle, sign,		2	00
17. " Wheeling Intelligencer," (Campbell, Tlan & Co.,) advertising, July, '74,	G	41	65

18. "Wheeling Register," (Lewis Baker) July 9, '74, 35 00

$1,834.05—C—$464.13—T. Total C & T, $2,298 18

North Carolina.

1. John G. Justice, ag't, Lincolnton, July 21, '74, C 130 00
   Capt. Farrell, July 27, '74, 21, '74.
2. Thomas K. Davis, ag't, Weldon, July 21, '74, " 92 94
3. J. Reynolds. L & D, Charlotte, " 21, '74, 45 00
4. D. S. Ryan, ag't, Kingston, " 21, '74, T 61 00
   V Aug'st 12, '74.
5. Atlantic & N. C. R. R. Co. Transportation E. R. Stanly, Pres't, Newbern, N. C., 525 67
   July 9, '74.
6. Raleigh & Gaston R. R. Co., × Transportation, W. J. Hawkins, Pres't Ridgeway, 1,195 33
   N. C.
7. Wilmington & Weldon R. R. Co., Transportation, wrote directors, Ag'st 12, '74, " G 970 73

$267.94—C—$2,752.73 T. Total C & T $3,020 67
× withheld for the present—sent 14, '74, × of Co. Raleigh Jan. 15, '75 am't $1,872.67
× and p'd to Capt. John Tarrell, Weldon, N. C., Mr. 20, '66.

No. 3.

all marke- S to Lous Stix & Co. July 2, '74, also July 23, '74.

Ohio.

1. C. W. Starbuck & Co., advertising, Cincinnati, S C 30 00
2. Fitch & Bro., " Chilicothe, 17 00
3. D McFarland, " Portsmouth, G 10 00
4. J. W. Newman, " do., C 6 00
5. E Raine, " do., 2 00
6. Brown & Davis, Repairing harness, Cin., S 19 15
7. Sam'l Blair & Co., Ice, " S 26 60
8. F. E. Snire & Co., Merchandize, " S 13 82
9. C. B. Prather & Co., Furniture, " S 10 75
10. Maguire & Co., Hay, " S 6 20
11. Anderson & McFarland, horse feed, Ports-

	mouth,	G	"	11 91
12.	Wm. Huddart & Co., repairs of J. Keid & Track, Cin.,	S	"	3 00
13.	J. B. Shroder, padlocks,	S	"	3 75
14.	H. G. Strobel, watering street,	S	"	5 00
15.	Louis Stix & Co., rent,	S	"	500 00
16.	Western Union Tel. Co., July 25, '74, telegraphy, months, to Nov. 21, '66		"	150 00
17.	John M. Owen, L & D, Cin.,	S	"	8 50
18.	Smith, Hawley & Co., furniture, Cin.,	S	"	35 00
19.	J. Black, office rent, Hillsboro',		"	16 67
20.	Capatinus Shaffer, stable rent, Portsmouth,	G	"	6 20
21.	R. B. Smith, stable rent, Cin.,	S	"	40 00
22.	Peter Hoffman, stable rent, Chilicothe,		"	9 00
23.	J. Taylor, hauling, Leesburg,	G	"	10 00
24.	P. Doherty, hauling, Hillsboro',	"	"	20 00
25.	John Taylor, hauling, Greenfield,	G	"	10 00
26.	John Dean, hire of horse, Athens,	G	"	22 50
27.	C. D. B. Webster, ag't., Chilicothe,	G	"	83 00
28.	W. H. Glenn, ag't., Hillsboro',	"	"	75 00
29.	E. Winchester, ag't., Marietta,	G	"	69 34
30.	T. J. Gresham, ag't., Portsmouth, Ohio,	G	"	75 00
31.	—— ——, ag't., Loveland, Ohio,		"	5 00
32.	J. S. Hawk, ag't., McArthur, Ohio,	G	"	28 03
33.	—— ——, ag't., Portland, Ohio,		"	11 90
34.	—— ——, ag't., Lyndon, Ohio,		"	1 40
35.	—— ——, ag't., Scioto Furnace, Ohio,		"	3 10
36.	—— ——, ag't.. Lilue Hocking, Ohio,		"	1 00
37.	—— ——, ag't., Webster, Ohio,		"	2 40
38.	R. C. Kinkle, Agst. 1, '74, Greenfield, Ohio,		"	12 50
39.	—— ——, ag't., Washington, Ohio,		"	1 75
40.	—— ——, " Cross Roads, Ohio,		"	1 40
41.	—— ——, " Pioneer, Ohio,		"	2 40
42.	—— ——, " Irwin's Station, Ohio,		"	1 60
43.	—— ——, " Harnden, Ohio,		"	10 00
44.	—— ——, " G. & W. Pike, Ohio,		"	5 00
45.	—— ——, " Jackson, Ohio,		"	15 00
46.	—— ——, " Blanchester, Ohio,		"	10 00
47.	—— ——, " Macyville, Ohio,		"	5 00
48.	—— ——, " Zuliskee, Ohio,		"	10 00
49.	—— ——, " Vincent, Ohio,		"	5 20
50.	—— ——, " King Coal Mines, Ohio,		"	1 00
51.	—— ——, " Martinsville, Ohio,		"	4 70
52.	—— ——, " Hope Furnace, Ohio,		"	7 30
53.	—— ——, " Raysville, Ohio,		"	3 10
54.	—— ——, " Vinton Furnace Co., Ohio,		"	1 95
55.	—— ——, " Frankfort, Ohio,		"	7 20

56.	—— ——, " Londonderry, Ohio,		"	5 70
57.	Sherman Bailey, clerk Chilicothe, Ohio,		"	35 00
58.	Earhart Buman, driver, " "		"	40 00
59.	John Murphy, " " "	G	"	20 83
60.	F. W. Winchester, clerk, Marietta, Ohio,	G	"	25 00
61.	William Grimes, clerk, Portsmouth, Ohio,	G	"	40 00
62.	E. Shaffer, driver, Portsmouth, Ohio,	G	"	50 00
63.	Paid by G. H. Swift, ag't., driver, Jackson, Ohio.	G	"	15 00
	Total C.,			$1,684 90

No. 4.

Georgia.

1.	H. W. Cottingham, agent, Augusta,		C	$585 66
2.	J. H. McDade, messenger,		C	100 00
3.	F. A. B. Jennings, "		C	56 66
4.	R. W. Atwell "		C	75 00
5.	P. S. Johnson, "		C	108 33
6.	R. M. Demere, " Savannah, R. Hendricks, July 20, '74	×	C	95 00
6.	H. C. Grubb, clerk, see South Carolina list R. Hendricks, ag't. $250	×	C	131 65
8.	F. Shackleford, messenger, Macon, July 20, '74,		C	55 66
9.	Hunter & Gammell, transportation, Savannah, R. Hendricks, ag't., July 20, '74	×	C	151 88
10.	—— ——, L & D, Columbus, Ga., July 20, '74, J. Bond.		T	233 00
11.	A. H. Coutes, ag't., Eatonville, July 20, '74,		"	30 00
12.	J. H. Nichols, " Milledgeville, July 20, '74,		"	90 62
13.	C. M. Davis, messenger,		"	6 70
14.	J. T. Jenkins & Co., oil and drugs, Atlanta, July 20, '74,		"	16 60
15.	C. W. & H. R. J. Long and Billups, oil and drugs, ——		"	59 41
16.	J. J. Ford, truck and repairs of wagon,		"	52 00
17.	Ogletree & Grubb, carpenters' work,		"	52 75
18.	S. S. "Herman Livingston," transportation, Note No.		"	67 35
19.	J. A. Witherspoon, carpenters' work, Athens, 23, July 20, '74, Do.		"	66 90

20. The town of Athens, Ga., license for wagon ($22),		"	22 00
21. Mrs. C. A. Johnson, L & D ——,		"	315 00
22. E. R. Hodgson & Bro., wagon repairs,		"	23 00
23. Nicholson, Moss & Hutcheson, office rent, Athens, July 20, '74,		"	75 00
24. James Bond returned included office rent, Columbus, July 20, '74,		"	135 00
25. Stockton & Co., advertising, Augusta,		"	96 87
26. F. Arnold & Co., L & D, R. Hendricks.		"	130 75
27. Geo. A. Mercer, legal services, Savannah, July 20, '74,		"	25 00
28. Roswell King, Augusta,		"	100 15
× 29. Alabama & Florida R. R. Co., transportation, Chas. T. Pollard, Pres't Mobile & G. N. R. R.			214 37
× 30. Mobile & Great Northern R. R. Co., transportation, Montgomery, Ala., (now Ala. Central) W. L. Lanier,			155 82
31. Selma & Meridian Do. R. R. Co., Selma, Ala., July 9, '74,			174 89
$359.84—C. $2,143.18—T. Total C & T,			$2,503 02

× Ala. & Fla. R. R. Co. consolidated with Mobile and G. N. R. R. in 1868, May 1.

No. 5.

Virginia.

1. M. B. Poitiaux, cashier Richmond office,							C	V	28 00
2. W. M. Keblinger, ag't., Charl't'ville (dec'd), Both to W. J. K.						×	G—		95 00
3. W. J. Keblinger, ag't , Charlottesville,						×	G		100 00
4. J. L. Brode, messenger,							"	V	134 15
5. Edwin W. Wade, clerk ( ), Richmond,							"		37 66
6. J. J. Terrill, L & D (gold), Lynchburg, July, 9, '74,							"		291 00
7. J. B. Rhea, reclamation (over-charge),							T		40 91
8. Margaret W. Day, office rent, Norfolk, J. A. D. & Co., July 31, '74.						×	"		274 98
9. Page & Maury, attorney's fees, Richmond,							"	V	1,300 00
10. Richmond & Danville R. R. Co., transportation, bal August 30, '66,							"	V	1,454 44
11. Do.	Do.	Do.	"	May,	'66		"	V	1,094 05
12. Do.	Do.	Do.	"	July,	"		"	V	667 95
13. Do.	Do.	Do.		August,	"		"	V	634 37
14. Do.	Do.	Do.		Sept.,	"		"	V	973 00

$4,823 81.

×15.	Rich'd, F'd'g & Poto'ac	Do., Sept.,	G	"	V	2,810 42
16.	Seab'd & Roanoke	Do., June & J'y	G	"		233 37
16.	Do. Do.	Do., August,	G	"		362 33

2,810 42
No. 2, 2,542 82

$5,353 24
233 37
362 33

5,958 94

18.	Virginia Central R. R. Co., 31st, J. H. Wyne, Pres't, Richmond, to Poitiaux, July 9, '74.		G	"	V	1,968 43
19.	Rich'd & Pet'b'g	Do., Nov. 2,	"	"		351 19

×See No. 22.

Reuben Ragland, pres't, Petersburg, July 9, '74.

20.	Petersburg,	do. Aug. 31, July 22, '74		"		406 82
21.	Orange & Alexandria	do., July, Aug't & Sep.,	"	"		2,176 88
22.	× Richmond, Fred'g & Po'mac	do., August, 1866,	G	"	V	2,542 82
23.	Potomac Ferry Co., Alexandria, Va., Aug'st & Sept.,		"	G	" ×	290 87
24.	Richmond Dispatch, advertising,				V	169 08
25.	Richmond Times, 2 bills $30 & $45,				V	75 00
26.	R. M. Smith & Son, Enquirer, Richmond,				V	121 00
27.	Gallagher & Co., " Va. Free Press,"				×	20 00
28.	R. W. Hunter, " Winchester Times,"				×	12 00
29.	" Winchester News,"				×	10 00
30.	L. H. Fitch, Messenger,				V	36 95
31.	E. W. Anderson, do.,				V	50 00
32.	State of Virginia, tax on gross receipts,				V	516 72
33.	City of Richmond, city tax,				V	1,000 00

See No. 15.

	Carried forward,				$20.279	89 V
	Amount bro't forward,				$20,279	89 V
34.	Warwick & Barksdale, horse-feed, Richmond,			T		54 50 V

35.	H. K. Douglass, attorney's fees. These 3 to Richards,	"	×	10 00 V
36.	D. T. Richards, agent, Winchester, Sept. 1, '66,	"		50 00 V
37.	J. B. Taylor, stable rent, do.,			5 00 V
	C $686.31. T $19,013.08. Total C & T,			$20,399 39 V

July 3, '74, wrote M. B. Poitiaux, Richmond, Va., and enclosed list of all marked V.

July 3, '74, all marked × sent direct to the parties, except the last three, all of which sent to D. T. Richards, Winchester.

National Express Co. to Petersburg R. R. Co.

1866.			
Sept. 1 to 31—To freight to and from Weldon,	900 54		540 32
" 59 safes to & " "	59 00		34 40
			$575 72

No. 6.

New York.

1.	Merwin & Simpkins, L & D, 262 Broadway, Successors of Merwin & Bray.	C	$	10 00
2.	S. A. Elliott, July 9, '74, L & D, 10 Courtland st.,	C		94 50
3.	Benton H. Martin, July 9, '74, L & D, 54 Barclay,	C		116 75
4.	N. W. Belcher & Co., L & D, July 9, '74, F. W. N. Harbuck, Warrenton, Ga., N. H.	C		200 00
5.	Stephen Lane, L & D, 205 Canal st., G, 124 Chamber's st.,	C	V	255 00
6.	H. Danford, L & D, 26 Courtland st.,	C		9 00
7.	Abernathy & Co., L & D,	T	V	92 37
8.	E. & H. F. Andrews & Co., L & D, $11.50—113.02 & 230.89 wrote to Anthony & Co. July 30.	"	V	355 41
9.	Thomas Chalmers, L & D,	"	V	122 50
10.	A. M. Hays & Co., do.,	"	V	35 00
11.	T. Frank & Co., do,	"	V	123 50
12.	Gordon & Slater, do.,	"		9 75
13.	Richardson & Co., do.,	"		23 76
14.	Joseph Schneider, do.,	"		50 00

15.	R. Ibbotson, pres't, &c., L & D,			"	V	191 11
16.	D. Appleton & Co.,	do.,	July 20,	"	V	57 79
17.	J. H. Foote,	do.,		"		100 00
		V To each marked thus.				
18.	E. J. Houseman, L & D, July 7, '74,			"		14 50
	C $685.25—T $1,175.69 Total, C & T,					$1,860 94

South Carolina.

×	1.	Wm. T. Walker, agt., Charleston,		G	C V	75 00
	2.	R. Hendricks, " Savannah, July 20, '74,			"	250 00
	3.	M. G. Farrh, messenger, Cheraw, July 20, '74,			"	129 00
×	4.	A. Cudworth, " Charleston,			"	76 26
×	5.	S. D. Easterly, rent, " Depapure, att'y,			"	93 75
×	6.	W. S. Depanpure, legal services, Charleston,			"	300 00
	7.	Hiram Harris, stationery & printing, " $360.40–$386–$66.77, O. A. F. Ravenel, pres't, July 9, '74.			"	393 75
×	8.	N. E. R. R. Co., transportation, Sep., Oct, & Nov., '66,			"	812 27
×	9.	Cameron & Barclay & Co., lanterns, 150 Meeting st., Charleston,			"	37 50
×	10.	Canstens & Jacobs, harness & repairing, Meeting st., Charleston,			" G	17 50
	11.	Geo. D. Ladd & Co., L & D, Winnsboro, July, 20, '74,			"	80 00
×	12.	Sawner & Ferguson, carpenters' work,			T	83 50
×	13.	C. D. Frank, repairs of wagon,			T	6 25
		Carried forward,				$2,354 78

		Amount bro't forward				$2,354 78
×	14.	Wm. Brookbanks, gas pipes, &c.,			T	63 90
	15.	Evans & Cogswell, office rent,		G ×	"	300 00
×	16.	Benj. M. James, blacksmithing, $3.30, wrote again July 21, '74, Wm. J. Magrith, pres't, Charleston, S. C., July 9, '74.		G	"	22 50
	17.	S. C. R. R. Co., transportation,				3,295 10
	18.	Charlotte & S. C. R. Co., transportation,				881 27
×		July 20, W. S. Walker, agent, C $2,265.03. 4,652.52. Total, C & T,			T	$6,917 55
		× To them July 7, '74.				

No. 7.

Pennsylvania.

1.	S. P. Wiltbank, agt., Philadelphia,	G	C	$595	90
2.	C. J. Wiltband, ass't agt., Philadelphia,	G	"	285	50
3.	Wm. Wyman, receiving clerk, Philadelphia,	G	"	135	25
4.	T. Dougherty, delivery " do.,		"	127	25
5.	Thos. P. Bacon, billing " do.,		"	240	85
6.	Wm. C. Ford do., " do.,		"	G 90	10
7.	A. T. Lavalette, cashier, " do.,		"	14	00
8.	C. C. Thompson, messenger, N. J. & Phil.,		"	60	00
9.	David Buest, "		G	60	00
10.	H. D. Basler, driver,		"	21	55
11.	Benj. Flood "		G	17	58
12.	Edward Beans, "		G	38	32
13.	H. Montgomery, driver,		"	12	02
14.	B. N. Oakman, "		"	25	55
15.	John H. Maxwell, helper,		"	9	50
16.	James Millman, "		"	10	52
17.	Fred. Nagle, watchman,		G	20	30
18.	Oglesby & Hodge, gas fixtures, 4 s. 7th st.,		"	72	68
19.	James M. Cooper, labor & materials,		"	49	25
20.	McCandless & Smith, L & D,		"	15	00
21.	Tucker & Sapman, transportation,		"	647	59
22.	Weinstein & Bro., L & D,		"	24	00
23.	Sarah B. Vanysyckel, rent of office, Philadelphia,		"	1,305	00
24.	McCall & Monteith, blacksmithing,		T	29	68
25.	Fulton & Wilkes, wagon repairs,		"	61	01
26.	Philip S. Justice, leaden dies,		G	90	80
27.	Andrew Johnson & Co., ———,		"	6	06
28.	C. L. Cadwallader, horse feed,		"	132	75
29.	Warner & Co., " "		"	39	90
30.	E. Ketterlmas, printing,		"	28	00
31.	James J. Martin, stationery & printing, 2 bills, $236.25 & $46,		"	282	25
32.	William Mann,		"	41	00
33.	R. McClure, veterinary surgeon,		"	50	00
34.	James B. Smith & Co., printing, &c.,		"	166	44
	Carried forward,			$4,805	60
	Amount bro't forward,			$4,805	60
35.	H. B. & A. Taylor, agents, Chester,	T		100	00
36.	Tryon Bros. & Co. L & D,	G		259	18

37. S. Bonnaffou,	do.,	"	279 30
38. Powers & Weightman,	do.,	"	132 50
C $3,877.71—T $1,698.87. Total C & T,			$5,576 58

Wrote S. P. Wiltbank (addressed letter to S. P. & C. J. W.), State ag't and ass't do.), Phil., & inclosed list of the above, July 3, '74.

P. W. & B. R. R. Co.

Cas. acceptance due Sept. 21, '66,	$1,901 60
" " " " 28, '66,	1,143 29
" " " Oct. 6, '66,	1,597 60
" " " " 23, '66,	1,769 60
Protest fees,	9 25
	$6,921 25

No. 8.

Delaware.

1. Boughman, Thomas & Co., Stationery,	T	$12 25
2. Thos. B. Eaton & Co., Ice,		2 85
3. A. A. Laws, Driver, Wilmington,		35 00
4. F. A. Goddard, agent,		27 93
5. Dickerson & Robelen, Hire of Horse,		51 00
6. W. A. Wisdom, Bl'ksmithing, &c.,		4 50
7. Underwood & Conner, Keeping Horse,		15 00
8. J. P. Smith,		18 00
9. Wm. McCauley & Co., Rent of Office,		25 00
Total,		$191 53

Wrote to F. A. Goddard, Wilmington, Del., formerly agent, July 6, '74. Returned enclosed and re-sent, July 22, '74, to W. McCauley & Co.

New Jersey.

1. Williamson & Co., Wagons, Resident of Balt.,	$180 19

No. 9.

Maryland.

& July 25, '74.

1. Louis Green, clerk, Annapolis, July 15, '74,	all to address of C. H. & M. House, ×	C		80 00
2. C. H. & M. House, Annapolis, July 15, '74,		"		90 00
Geo. W. Dobbin, att'y.				
3. Hollingsworth, Warfield, pay as Sup't and notes of Co.,		"		5,171 26
4. Baltimore Steam Packet Co., Transportation,		G		347 76
5. Baltimore Gas Light Co., Gas consumed,		"		92 98
6. do. do. do. do., Service Pipes,		"		22 48
7. Herman Born (Born & Ruth), repairs wagons, 37 Waeshe St.,		"	G	32 25
8. Adam Kahler, horse feed, 365 W. Balt.,		"	G	91 85
9. Gibson & Kirk, locks, &c.,		"	G	36 40
10. " Baltimore Sun," advertising,		"		28 25
11. Henry Roth, repairs wagons, 35 Waeshe St.,		"	G	23 35
12. Bibb & Co., putting up and wiring stove,		"		2 00
13. Fred'k Oelmann, repairs wagons, 61 and 65 German,		"		14 66
14. L. Green, ag't, Havre de Grace, wrote July 16, '74,		"		112 21
15. Canfield, Bros. & Co., L. & D., 229 W. Balt. St.,			G	373 66
16. Burton & Irving, do., 168 " " "			G	31 00
17. Andrews & Thompson, do., 5 " " "		G	"	16 80
18. George Brown, do., 655 Charles St.,		"		40 41
19. Geo. W. Webb & Co., do., S. E. cor. Light and Balt. sts.,		"		25 00
20. Hodges Bros., L. & D., 23 Hanover st.,				36 60
21. Cushings & Bagly, L. & D., 262 W. Balt. st.,		G		31 62
22. Schwerdtman & Co., do., 327 " " "		"		29 13
23. Rudolph Oehl, driver,				88 33
24. Daniel Seaton, "		G		115 00
25. John Watkins, watchman police,				21 00
26. A. J. Smith, solicitor,				60 00
27. McC. Y. Barry, clerk at depot, Halifax, N. S., wrote July 14, '73,				139 23
28. W. H. C. Bayly, clerk at depot, Washington,				62 50
29. Stephen Cremin, porter,				32 00
30. George Bishop, clerk,				30 00
31. G. A. Schwartzman, ag't Balt. office,				43 88
32. F. B. Berkeley, clerk Balt. office,				114 00

33. Milton Bull, driver, 697 W. Balt. st.,				115 00
34. Henry Vaughan, driver, Aug. 25, '74,				50 00
Carried forward,				$7,600 71
Brought forward,				$7,600 71
35. Geo. Bond, driver,			C	57 05
36. Andrew O'Meara, driver,				45 57
37. James Hood,	"			24 56
38. W. H. Tibals,	"			34 68
39. Edw'd McGeehan,	"			57 84
40. F. Grill,	"			19 25
41. Jacob Arnold,	"			13 00
42. John Manly, groom,				23 57
43. Thos. McCullough, groom,				25 00
44. Thos. Burns,	"			25 00
45. A. Boyce, watchman,				28 00
46. F. Craig, mess. with wagons,				10 80
47. J. Schleifer, "	"	"		7 94
48. W. F. Anderson, weigher,			"	17 50
49. Geo. McAllister, extra conductor B. & O., laborer,			"	18 50
50. S. Bishop, mess. at depot,			"	11 00
51. Martin Clark, mess. Balt. office,			"	92 73
52. Geo. Clark, driver,			G	63 00
53. S. S. Mann,	L & D,		T	116 20
54. H. Frank & Co.,	do.		G	24 00
55. Mrs. S. C. Ricketts,	do.		"	20 00
56. C. E. Needles,	do.		"	8 00
57. E. Whitman & Sons,	do.		G	10 00
58. J. H. Walzl,	do.		"	39 22
59. McDowell, Robinson & Co.,	do.		G	156 50
60. John T. Watkins,	do.		"	14 00
61. Hild & Mitchell,	do.		"	17 69
62 R. Sinclair & Co.,	do. and trucks,		"	30 65
63. Do.	do.		"	3 25
64. Boerman & Littlebaum,	do.		"	39 27
65. Weiglien & Heilner,	do.		"	11 82
66. Walter S. Moore & Co.,	do.		"	26 76
67. J. W. Ebert & Co.,	do.		"	7 00
Amount carried forward,				$8,700 06
Maryland continued.				
Amount brought forward,				8,700 06
68. L. H. Miller, safes,			G T	2,300 00

69. Thos. D. Johnston, insurance for August, 1866,	"	1,274	41
70. Bolton Brothers, lanterns,	"	17	50
71. David Anderson, bl'ksmithing,	"	67	75
72. W. H. Oler, ice,	"	19	15
73. Kelly & Piet, stationery & printing, July, August, Sept. & Oct.,		2,222	47
74. "Evening Transcript," advertising,	"	116	07
75. Montgomery Slade & Co., 1 p'r store skids,	"	6	00
76. Edward Sinn, livery of horse,	"	3	50
77. P. P. Pendleton, horse feed,	"	106	80
78. J. A. Pierce, messenger,	"	155	58
79. D. Claude, rent of office, Annapolis, July 15, '74,	"	25	00
80. W. H. Glancott, agt., Berkely Springs,	"	36	25
81. Hil'd Wammelle & Mitchell, overcharge,	"	4	45
82. R. H. Tall, medical services,	"	4	00
83. James T. Ball, agt., Sumittsville,	"	15	00
84. B. & O. R. R. Co., transportation, $41,432.48, $21, $10.60,	"	41,472	08
85. John Nugent, horse feed,	"	75	69
86. A. S. Abell & Co., advertising, Baltimore "Sun,"	"	21	42
		15.36	
87. Ammidon, Cranbie & Co., oil, &c.,	G	16	26
C, $8,175.70; T, $48,483.41 Total, C & T,		$56,659	11

No. 10.

Statement Showing Amount Due the the Employees of the N. E. & T. Co., at Baltimore and its vicinity,

1. George Clark, driver,	63	00
2. Rudolph Oehl, "	88	33
3. Dan'l Seaton, "	115	00
4. McC. Y. Barry, in charge of depot, s. H. st.,	139	23
5. W. H. C. Bayley, clerk at do.,	62	50
6. S. Cremin, porter, Balt. office,	32	00
7. Milton Bull, driver,	115	00
8. Geo. Bishop, clerk,	30	00
9. Henry Vaughan, driver,	50	00
10. George Bond, do.,	57	05
11. Andrew O'Meara, driver,	45	57
12. J. Hood, do.,	24	56
13. W. H. Tibals, do.,	34	40
14. E. McGeehan, do.,	57	84
15. F. Grill, do.,	19	25
16. J. Arnold, do.,	13	00

17.	J. Manley, groom,	23 57
18.	Thomas McCullough, groom,	25 00
19.	Thos. Burns, do.,	25 00
20.	S. C. Taliaferro, clerk,	75 00
21.	C. M. Davis, messenger,	71 66
22.	C. Yungling, sub agent, &c.,	314 85
23.	A. Boyce,	28 00
24.	F. Craig, mess. with wagons,	10 80
25.	J. Schlieffer, do.,	7 94
26.	W. F. Anderson, weigher at depot,	17 50
27.	Geo. McAllister, laborer,	18 50
28.	S. Bishop, mess.,	4 00
29.	Martin Clark,	92 22
30.	F. B. Berkeley, clerk to cah'r,	114 00
31.	Thos. Dobbin, night money clerk,	75 00
32.	W. H. Gordon, night-watch, Balt. office,	12 50
33.	R. H. Crawley, messenger,	165 00
34.	Edward L. Clark,	56 22
35.	A. V. Stewart, manifest clerk,	120 50
36.	Thos. H. Cook, clerk,	149 50
37.	Benj. R. Grymes, mess.,	60 00
38.	W. L. Kelle, record'g clerk,	141 97
39.	Geo. Walter, driver,	95 00
40.	G. A. Schwartzman, ag't,	43 88
41.	John Wilkins, watch,	21 00
42.	A. J. Smith, solicitor,	120 00
43.	R. T. Allison,	167 50

40 St. Paul st.,
Receiver's office,
Balt., Md.,
April 16, 1867.

I certify the above to be correct, and taken from the books of the Co.

L. R. SMOOT,
For Thos. G. Pratt, Receiver.

The National Express & Transportation Co.

To W. H. C. Bayley.

1866.

Sept. 30—For one month's services as clerk at depot, 260 s. Howard st.,	$65 00	
By cash of Balt. agency,	2 50	
		$62 50

Correct—G. A. Swartzman, ag't.

The National Express and Transportation Co.

To R. A. Crawley.

1866.

Sept. 30—For services as messenger from June to date, $225 00
By cas- of Balt. agency, 60 00

Balance due, $165 00

Correct—G. A. Schwartzman, ag't.

The National Express & Transportation Co.

To J. Schleiffer.

1866.

Sept. 30—For services as messenger with Company's wagons in Sept., 1866, $7 94

Correct—G. A. Schwartzman, ag't.

The National Express & Transportation Co.

To F. Craig.

1866.

Sept. 30—For services as messenger with Company's wagons in Sept., $10 80

Correct—G. A. Schwartzman, ag't.

The National Express & Transportation Co.

To J. Hood.

1866.

Sept. 30—For services as driver in month of Sept., $24 56

Correct—G. A. Schwartzman, agent.

The National Express and Transportation Co.

To Henry Vaughan.

1866.

Sept. 30—For one month's services as driver (Sept., 1866), $50 00

Correct—G. A. Schwartzman, ag't.

The National Express & Transportation Co.

To W. H. Tiball.

1866.

Sept. 30—For 24 days' services as messenger with Company's wagons, @ $43 per mo., $34 40

Correct—G. A. Schwartzman, ag't.

The National Express & Transportation Co.

To Thomas Dobbin.

1866.

Sept. 30—For services as night-money clerk, Balt. office, for the month of September 1866, $75 00

Correct—G. A. Schwartzman, ag't.

The National Express & Transportation Co.

To Stephen Cremin.

1866.

Sept. 30—For one month's services as porter, Balt. office, $52 00

By cash of cashier, 20 00

$32 00

Correct—G. A. Schwartzman, ag't.

The National Express and Transportation Co.

To George Bishop.

1866.

Sept. 30—For one month's services clerk in Balt. office, $65 00

By cash of Baltimore agency, 35 00

Balance due, $30 00

Correct—G. A. Schwartzman, ag't.

The National Express and Transportation Co.

To George Clark.

1866.

Oct. 3—For services as driver for Sept., 1866, $60 00

1½ days in Oct., 3 00

$63 00

Correct—G. A. Schwartzman, ag't.

The National Express and Transportation Co.

To F. B. Berkeley.

1866.

Oct. 10—For services as clerk to "cashier" Balt. office from Aug'st 1 to date @ $75 per month, $175 00

By cash rec'd of cashier, 61 00

Balance due, $114 00

Correct—G. A. Schwartzman, ag't.

The National Express and Transportation Co.

To Thos. McCullough.

1866.

Oct. 20	For one week's services as groom, Glenn st. stables,	10 00
27	For one week's services as groom, Glenn st. stables,	10 00
Nov. 4	For one week's services as groom, Glenn st. stables,	10 00
		$30 00
	By cash Balt. agency,	5 00
	Balance due,	$25 00

Correct—G. A. Schwartzman, ag't.

The National Express and Transportation Co.

To Thomas Burns.

1866.

Oct. 20	For 1 week's services as groom, German st. stables,	10 00
27	For 1 week's services as groom, German st. stables,	10 00
Nov. 4	For 1 week's services as groom, German st. stables,	10 00
		$30 00
	By cash of Balt. agency,	5 00
	Balance due.	

Correct—G. A. Schwartzman, ag't.

The National Express and Transportation Co.

To A. Boyce.

1866.

Oct. 20	For 1 week's services as watchman, German st. stables,	$14 00
27	For 1 week's services as watchman, German st. stables,	14 00
		$28 00

Correct—G. A. Schwartzman, ag't.

The National Express and Transportation Co.

To John Manley.

1866.

Oct. 20—For 1 week's services as groom, German st. stables,		$10 00
27—For 1 week's services as groom, German st. stables,		10 00
Nov. 3—For 6 days' services as groom, German st. stables,		8 57
		$28 57
By cash of Balt. agency,		5 00
Balance due,		$23 57

Correct—G. A. Schwartzman, ag't.

The National Express and Transportation Co.

To J. Arnold.

1866.

Oct. 20—For one week's services as driver strong team,	$13 00

Correct—G. A. Schwartzman, ag't.

The National Express and Transportation Co.

To F. Grill.

1866.

Oct. 27—For 1 week's services as driver of strong team,		$13 00
Nov. 3—6 days' " " " "		11 25
		$24 25
By cash of Balt. agency,		5 00
Balance due,		$19 25

Correct—G. A. Schwartzman, ag't.

The National Express and Transportation Co.

To. A. V. Stewart.

1866.

Oct. 31—For services as manifest clerk, Balt. office for the months of Sept. and Oct., 1866, @ $65,		$130 00
By cash of Balt. agency,		9 50
Balance due,		$120 50

Correct—G. A. Schwartzman, ag't.

The National Express and Transportation Co.

To Thomas H. Cook.

1866.

Oct. 31—For services as clerk at Balt. office for the months of September and October, 1866, @ $75,	$150 00
By cash of Balt. agency,	50
Balance due,	$149 50

Correct—G. A. Schwartzman, ag't.

The National Express and Transportation Co.

To Geo. McAllister.

1866.

Oct. 31—For services as laborer at depot, S. Howard st., from Oct. 13 to date,	$22 50
By cash of Balt. agency,	4 00
Balance due,	$18 50

Correct—G. A. Schwatzman, ag't.

The National Express and Transportation Co.

To George Bond.

1866.

Oct. 31—For two months' services as driver (Sept. and Oct., '66) $41,	$82 84
By cash of Balt. agency,	24 95
Balance due,	$57 05

Correct—G. A. Schwartzman, ag't.

The National Express and Transportation Co.

To E. McGeehan.

1866.

Oct. 31—For two months' services as driver (Sept. and Oct., '66),	$62 84
By cash of Balt. agency,	5 00
Balance due,	$57 84

Correct—G. A. Schwatzman, ag't.

The National Express and Transportation Co.

To Rudolph Oehl.

1866.

Oct. 31—For services as driver for Sept. and October, 1866, $88 33

Correct—G. A. Schwartzman, ag't.

The National Express and Transportation Co.

To J. Bishop.

1866.

Oct. 31—For services as messenger at depot from Oct 13 to date, $15 00

By cash of Balt. agency, 4 00

Balance due, $11 00

Correct—G. A. Schwartzman, ag't.

The National Express and Transportation Co.

To Andrew O'Mera.

1866.

Oct. 31—For two months' services as driver (Sept. and Oct., '66), $50 57

By cash of Baltimore agency, 5 00

Balance due, $45 57

Correct—G. A. Schwartzman, ag't.

The National Express and Transportation Co.

To W. F. Anderson.

1866.

Oct. 31—For services as weigher at depot, 260 S. Howard st., from Oct. 13 to date, $22 50

By cash of Balt. agency, 5 00

Balance due, $17 50

Correct—G. A. Schwartzman, ag't.

The National Express and Transportation Co.

To Mc. Y. Barry.

1866.

Nov. 3—For services in charge of depot, 260 S. Howard st., for Sept., Oct., and 3 d'ys in

November, @ 75 per mo., $157 50
By cash of Balt. agency, $17.27. By cash of cashier, $1, 18 27

$139 23

Correct—G. A. Schwartzman, ag't.

The National Express and Transportation Co.
To W. H. Gordon.

1866.
Nov. 10—For one week's services as night-watchman, Balt. office, $12 50

Correct—J. T. M. Barnes, agent.

The National Express and Transportation Co.
To Edward L. Clark, Dr.

1866.
Dec'r 17—For services as messenger in Balt. office from Sept. 1, to Dec'r 17, '66, @ 26 per month, $92 22
Cr. by cash of agency, 36 00

Balance due, $56 22

Correct—J. T. M. Barnes.

Nos. 11 & 12.

August 1st, 1866.

The National Express and Transportation Co.
To. L. R. Smoot, Dr.

Mc'h 120
Apr. 150
May 150
June 150
July 150
$750

For services as ass't to the Gen'l Superintendent of the N. E. & T. Co., from March 8, to July 31, 1866, both inclusive, at $150 per month, $720 00

Approved—B. F. Ficklin, Gen'l Supt.

Received payment.
[U. S. Inter. Rev. Stamp, 2 cts.]

Baltimore, August 10th, 1866.

Received of the National Express and Transportation Com-

pany, fifty dollars, in full for services in office of Gen'l Superintendent, from 1 Aug'st to 10th Aug'st, at $150 per month, $50.

Correct—J. J. Kelly, Gen'l Sup't.

[U. S. Inter. Rev. Stamp, 2 cts.]

No. 13.

H. Warfield, 4 notes of $750 each, dated August 10, '66, @ 3, 6, 9 and 12 months, balance of claim for services, &c., sworn to by him.

Geo. Clark, services as driver Sept., '66, $60, 1½ days in Oct., $3,		$63 00
John Watkins, certified for,		21 00
Rudolph Oehl, driver, Sept. and Oct., '66,		88 33
Dan'l Seaton, certified by G. A. Schwartzman, G		115 00
A. J. Smith, Sept. and Oct., '66, certified, G		120 00
McC. Y. Barry, services in ch'ge depot, 260 s. Howard st., from Sept. and Oct., '66, 3 days in Nov., @ 75,	$157 50	
By cash of Balt. agency, $17.27 by cash'r,	18 27	
		139 23
W. H. C. Bayley, clerk at depot, 260 s. Howard st., 1 month,	65 00	
By cash of Balt. agency,	2 10	
		62 50
S. Cremin, Sept. 30, 1 month services as porter Balt. of.,	$52 00	
By cash of cashier,	20 00	
		32 00
M. Bull, approved by ag't, for Sept. & Oct.,	$120 00	
By cash,	5 00	
		115 00
Geo. Bishop, Sept. 30, 1 month's services as clerk B. O.,	65 00	
By cash of B. A.,	35 00	
		30 00
H. Vaughan, Sept. 30, services driver for Sept., '66,		50 00
Geo. Bond, Oct. 31, " Sept. & Oct., '66,	82 00	
Cr. by cash of B. A.,	24 95	
		57 05
Andrew O'Meara, Oct. 31, driver, Sept. & Oct., '66,	50 57	
Cr. by cash of B. A.,	5 00	
		45 57

J. Hood, Sept. 30, services driver in Sept., '66, 24 56
W. H. Tiballs, 24 d'ys services in Sept., '66, @ $43 per month, mess. in ch'ge wagons, $34.40, 34 68
E. McGeehan, Nov. 2, driver Sept. & Oct., 2 d'ys in Nov., $62 84
By cash of B. A., 5 00
57 84
F. Grill, Oct. 27, 1 week's driving of strong team, 13 00
Nov. 30, 6 days' " " " 11 25
$24 25
By cash of B. A., 5 00
19 25
J. Arnold, Oct. 20, 1 week driving strong team, 1 week, 1 week, 6 days, 13 00
J. Manly, Oct. 20, Oct. 27, Nov. 3, $10, & 10, & 8.57, less 5, G 23 57
G. C. Taliaferro, certified by Kelly, 75 00
R. T. Allison, affidavit, 167 50
July 31, at Troy, N. Y.—Timothy Quinn, Troy, N. Y., services, ag't, &c., Harper's Ferry, G 220 00
W. L. McAfee, trustee, Wheeling, W. V., bal. on rent, rec'd $497.39 from sheriff, July 31, to Wheeling, W. Va., G 85 96
H. Heth, certified by Ficklin, 373 66
D. Anderson, bl'ksmithing, certified by, $67 50 G
do., " acc., 12 00
79 50

Aug't 6, 539 Broadway, N. Y.
Dwight Ripley (care of Bigelow & Frank, N. Y.), $500 lost, sent from Eufala, Ala.
J. Frank Brown, 606 w. Fay,
J. F., cor. Bank & Twelfth,
James F. Brown, assignee of C. M. Davis, 74 66
J. F., 120 Merher,
Jos. F., 501 n. Tremont,
Chas. Yeungling, certified by Keelly, 5 Pot., 314 85
Thomas & Moon, horse feed, Nov. 1, '66, 76 German st., G 136 00
Wrote Poitiaux about this July 31, '74, W. D. M., Lynchburg, Va., August 11, '74.
× W. D. Miller, Richmond, Va.
Draft of Briscoe Baldwin on J. V. H. Allen, treasurer, 10 d'ys sight, to his order, protested 27 Sept., '66, for 1,136 24
Buckley & Marbury, August 6, '74.
A. C. Jones, ag't, Washington, July 25, '66,

from C. Mayer, on cash'r Baltimore, 30 d'ys sight, accepted Sept 3, '66, due Oct. 3 (claim of (Union Fire Co.)
Ward Bro.) 250 00

1 week, 1 week, 1 week,
Thomas McCullough, Oct. 20, 27, Nov. 4, as groom—cash rec'd, $5,
Thos. Burns same as above.

1 week, 1 week,
A. Boyce, watchman at stable, Oct. 20, Oct. 27, @ 14 per w. 28 00
F. Craig, mess. with wagons in Sept., '66, 10 80
J. Schleiffer, same as above.
W. F. Anderson, messenger at depot Oct. 31 from Oct. 13, to date, 22 50
Cr. by cash, $ 5 00
17 50

Geo. McAllister, laborer at depot from Oct. 3, to date, Oct. 31, 22 50
Cash rec'd, 4 00
18 50

S. Bishop, services as mess. at depot, Oct. 13 to 31, $15 00
Cash, 4 00 G
11 00

Martin Clark, certified by Kelly, 92 22
G. A. Scwartzman, Oct., ag't for Oct., $100 00
Balt. office, 56 12
43 88

F. B. Berkely, clerk to cash'r, August 1, to Oct. 10, @ 75, $175. Received of cash'r $61, 114 00
Aug'st 11, '74—W. H. Campbell, ag't at Fairmount, Va., 4 months' services as ag't, ending Oct. 1, '66, @ 20, $80.75. $80 75
Thos. H. Cook, clerk, B. A., Sept. and Oct., '66, @ 75, 150 00
Cash rec'd, 50
149 50

S. P. Wiltbank, Aug'st 14, '74—Do., cook for Nov., $75; cash rec'd, 10—trustees, 65 00
Grymes, Hempstead P. O., King Geo. co., Va.
Benj. R. Grymes, mess. Balt. to Wheeling, July 31, '74.
Sept., & 6 d'ys in Oct. @ 50, certifi. by Schwartzman, G 60 00
×W. L. Keller, clerk, Balt. office, certifi. by

Kelly,			141 97
W. H. Gordon, night-watch, 1 week's services, Nov. 4th to Nov. 10,			12 50
July 30, '74. Mahlon, Fulton & Charles Walker, (Fulton & Walker, No. 35, No. 20 st., Phila.,) Judgment on open acc., $527.36 (Orig. acc., $511.01) Wiltbank, Aug't 14, '74,			527 36
Arthur Shaaff, cash'r, Charleston, S. C., Dec., '66,	150 00		
Cash p'd freight on property Co., p'd by him,	18 20		
			168 20
A. V. Stewart, manifest clerk, Balt. office, P. D. $130 July.			
Sept. & Oct., '66, @ 65—$130, cash rec'd of B. A.,	9 50		
			120 50
Geo. M. Walters, driver, Sept. & Oct., '66, @ 50, 24 Clark st.	100 00		
Cash rec'd, $5 (certified by Kelly)	5 00		
			95 00
Thos. Dobbin, night-money clerk, services, Sept., '66,			75 00
R. A. Crawley, messenger, June to Sept. 30,	225 00		
Less cash rece'd,	60 00		
			165 00

Barnes, ag't, from Nov. 6 to Dec, 17, 1866.
E. & H. T, Anthony, 591 Broadway, N. Y.
Lost packages—wrote July 30, '74.

No. 14.

List of claims against The National Express and Transportation Company, sent E. Platt Johnson, att'y at law, New York.

Claimants.	Amount.	Represented by.
B. & O. R. R. Co.,	$44,106 84	James A. Buchanan, Esq.
Bank of Commerce,	17,417 68	S. T. Wallis, Esq.,
Phil., Wil. & B. R. R. Co.,	6,921 25	Charles Marshall, Esq.
J. J. Terrill—gold,	291 00	
	68,736 77	do.
Rich'd & Fred'g & P. R. Co.,	5,353 24	L. R. Smoot.

Hollingsworth Warfied,	5,171 36		do.
S. C. R. R. Co.,	4,238 70		do.
Rich'd & Danville R. R. Co.,	2,842 68		do.
Wm. D. Miller,	1,138 55		do.
Wil. & Wel. R. R. Co.,	970 73		do.
Chas., Columbia & Aug. R. R. Co.,	881 27		do.
N. E. R. R. Co.,	812 27		do.
L. R. Smoot,	770 00		do.
Seaboard & Roanoke R. R. Co.,	597 88		do.
J. T. M. Barnes,	356 66⅔		do.
Bat. Steam Packet Co.,	347 76		do.
Louis Stix & Co.,	500 00		do.
Potomac Ferry Co.,	290 87		do.
		24,266 97	do.
Total,		93,003 74	Principal.

Baltimore, Md., June 12, 1876.

No. 15.

No. 388. 10 shares.

The National Express and Transportation Co.,
Incorporated under the law of the State of Virginia:

This is to certify that James L. Davis is entitled to ten (10) shares of the capital stock of The National Express and Transportation Company, on each share of which has been paid $5.00 in cash, leaving $95.00 to be paid when called for; transferrable only on the books of the company on surrender of this certificate.

Witness the seal of the company attested by the signature of the president and secretary.

[Seal.] J. E. JOHNSTON,
President.

P. T. MOORE,
Secretary.

Richmond, Va., January 25th, 1866.

Capital, $5,000,000. Shares, $100 each.

[U. S. inter. rev. stamp, 25 cts.]

Georgetown, D. C., Feb'y 5th, 1866.

Received of James L. Davis the sum of fifty dollars per share on ten shares of the capital stock of The National express and Transportation Company; making a total of ten dollars per share paid in on said stock to date.

G. S. GETTY,

Agent.

$50.00.

[U. S. inter. rev. stamps, 2 cts.]

And at another day, to-wit:

At a chancery court of the city of Richmond, continued by adjournment and held for said city on the 10th day of July, 1880.

John W. Wright, sheriff of the city of Richmond and administrator of W. W. Glenn, who sues, &c., Pl't'ff.

against

The National Express and Transportation Company & others, Def'ts

This came Joseph R. Anderson, by James Alfred Jones, his counsel, and opposed the consideration of this case at this time upon the ground, that under the circumstances no opportunity had been allowed for the examination of the commissioner's report and the want of proper parties, and that the case was not ready for a hearing, and moved the court to continue the case until the next term. And it appearing to the court that the report of Commissioner O. G. Kean, made under the order of enquiry entered herein on the 6th day of October, 1879, was filed in the clerk's office only on the 19th day of June ultimo, during the present term of the court, and that thus proper time has not been allowed to parties interested for the examination of said report, and the court having previously announced according to the usual rule before the closing day of the term, that on account of the great pressure of business and the impossibility of hearing other contested cases, it could and would receive and consider no papers in any contested cause after the 26th day of June ultimo. And it thus appearing that this cause is not ready for hearing, and cannot be heard at this time on the said report or any other contested matter, it is ordered that the case be continued to the next term of the court

And at another day, to-wit: At a chancery court of the city of Richmond, continued by adjournment and held for said city on the 14th day of December, 1880.

John W. Wright, sheriff of the city of Richmond, and as such administrator of W. W. Glenn, deceased, who sues, &c., Pl't'ff,

against

The National Express and Transportation Company and others, Def'ts.

IN CHANCERY.

This cause, in which proceedings have been had in the mode prescribed by the statute against the absent defendants, Wm. H. Perot, Wm. Devries, D. J. Foley, F. P. Zimmerman, J. Carter Mowbray, and Wm. H. Webb, and which has been regularly matured and proceeded in as to all of the defendants, came on this day to be heard upon the cause set for hearing as to the said absent defendants (M. G. Harman, one of the board of directors of said company, being dead, the suit is abated as to him), and upon the papers formerly read, the answer of the defendant, John Blair Hoge, and the orignal answer of John J. Kelly, both of which were tendered, to be filed at the last term, and are this day filed *nunc pro tunc*, and the amended and supplemental answer of the said defendant, John J. Kelly, this day filed, the general replications of the plaintiffs to the said revival answers, and upon the report of Master Commissioner O. G. Kean, of the 19th day of June, 1880, and the amended and supplemental report of said commissioner this day filed, to which said several reports there is no exception, and upon exhibits filed, and was argued by counsel. On consideration whereof, and for reasons expressed in writing, filed and hereby made a part of the record, and to be so considered, but not to be entered upon the order book, the court is of opinion (1st) that the deed of trust in the proceedings mentioned, bearing date the 20th day of September, 1866, made by the said National Express and Transportation Company to John Blair Hoge, John J. Kelley, and C. Oliver O'Donnell, trustees, for the benefit of sundry creditors therein referred to, is a good and valid deed under the laws of the State of Virginia, where the said corporation was chartered, and had its principal office, and where the said deed was executed, delivered, and recorded, and the court doth so adjudge, order, and decree. And the court is further of opinion (2ndly) that, under the laws of the State of Virginia, the legal effect of the said deed was to grant, convey, and assign to the said trustees all of the estate, property, rights, and credits of the said company of every kind, and wherever situated or being, and that accordingly all of the said estate, property, rights, and credits did pass to and were vested in the said trustees by the said deed, including the credits allowed by statute and by the said company to its stockholders for the uncalled for and unpaid part of their several subscriptions to the capital

stock of the said company, and the right to receive and collect the same according to the terms of said contract of subscriptions for the purposes of said trust, and the court doth so adjudge, order, and decree.

(3.) And the court being of opinion that the preferences provided for by said deed in favor of certain creditors therein referred to are legal and valid, according to the laws of Virginia, doth so adjudge, order, and decree.

(4.) And it appearing to the court that said John Blair Hoge and John J. Kelly, surviving trustees in said deed, are willing, each, to resign and renounce the office of trustee under said deed, and that they are so situated as not to be able efficiently to perform the duties of the same, and that it is right and expedient, under all the circumstances, that they be relieved from the said trusteeship, the court doth adjudge, order, and decree that the said John Blair Hoge and John J. Kelly, surviving trustees of themselves and C. Oliver O'Donnell, under the said deed, bearing date the 20th day of September, 1866, executed to them by the said National Express and Transportation Company, in trust for the benefit of its creditors, be and they are hereby respectively removed from the office of trustee under said deed.

(5.) And it further appearing to the court that John Glenn, Esquire, of number twelve St. Paul street, in the city of Baltimore, and State of Maryland, is a fit and proper person to execute the duties of said trust, it is adjudged, ordered, and decreed that the said John Glenn be and he is hereby substituted and appointed trustee in the said deed in the room and stead of the said Hoge and Kelly, hereby relieved and removed, and that he be and is hereby clothed with all the rights and powers, and charged with all the duties of executing the trusts of said deed to the same effect as were the original trustees therein. And the said John Blair Hoge and John J. Kelley are authorized and directed to transfer and deliver to the said John Glenn, substituted trustee as aforesaid, all of the books and papers of the said National Express and Transportation Company of every kind and description, and all of the estate and property of said company of every kind and description now in possession of them, the said Hoge and Kelly, or either of them, and the receipt of the said John Glenn to them for the same shall be full acquittance and discharge therefor.

But the said John Glenn is not to take possession of said property, books and papers, or receive any money as such substituted trustee until he, or some one for him, shall enter into *into* bond, with good security, before the clerk of this court, in the penalty of one hundred thousand dollars, conditioned for the faithful discharge of his duties as such trustee.

(6) And the court doth approve and confirm so much of said report of Commissioner O. G. Kean, filed on the 19th day of

June, 1880, as ascertains the debts of said company, and doth adjudge, order and decree that the said National Express and Transportation Company do pay to the said Baltimore and Ohio Railroad Company forty-one thousand two hundred and ninety dollars and sixty-three cents, with interest thereon at the rate of six per cent. per annum from 31st day of October, 1866, till paid; that the said National Express and Transportation Company do pay to the Bank of Commerce (Baltimore) seventeen thousand four hundred and seventy-nine dollars and sixty-eight cents, with interest thereon at the rate of six per cent. per annum from the 4th day of July, 1868, until paid; that it do pay to John W. Wright, sheriff of the city of Richmond, and as such administrator of the estate of William W. Glenn, deceased, forty-two thousand five hundred and thirty-one dollars and thirty-one cents, with interest thereon at six per cent. from the 24th of June, 1870, until paid, and eight dollars and sixty five cents costs; that it do pay to Francis Murray, for the use of John R. Terry, thirteen thousand six hundred and eighty-three dollars and sixty-seven cents, with interest thereon at six per cent. from the 11th day of March, 1867, until paid, and six hundred and forty-eight dollars and forty-nine cents costs; that the said National Express and Transportation Company do pay to Henry M. Bach, trustee for John O. Reid, Henry R. Robins and Nicholas E. Watkins, eighty-four thousand, eight hundred and thirty-eight dollars and eighty-three cents, with interest thereon at six per cent. per annum, from the 11th day of March, 1867, till paid; that it do pay to Luke H. Miller three thousand seven hundred and forty-eight dollars and eighty-three cents, with like interest thereon from the 19th of September, 1879, until paid, and forty-two dollars and fifteen cents costs; that it do pay to Fulton and Walker five hundred and twenty-seven dollars and thirty-six cents, with like interest thereon from March, 23d, 1867, until paid, and nine dollars and eighty-seven cents costs; that it do pay to Robert Higgins eight hundred and ninety-six dollars and fifty-eight cents, with like interest thereon from April 2d, 1866, until paid, and thirty-seven dollars and seventy-five cents costs; that it do pay to George McMarster seven hundred and thirty-one dollars and ninety-three cents, with like interest thereon from September 1st, 1866, until paid; and that the said National Express and Transportation Company do pay to the several parties hereinafter named, and their legal representatives, the several sums, with like interest thereon, stated in said report as due to said several parties, being each and every claim not hereinbefore specifically mentioned, to-wit: That it do pay to The Pennsylvania Company for Insurance on Lives and Granting Annuities, trustee under the will of Sarah B. Vansyckel, twelve hundred and eighty dollars, with like interest thereon from March 9th, 1867, until paid, and fourteen dollars and eighty-seven cents costs; that it do pay to Gardner T. Getty

sixty-six dollars and three cents, with like interest thereon from November 16th, 1866, until paid, and forty-five dollars and forty-five cents costs; that it do pay to Arthur Shaaff one hundred and sixty-eight dollars and twenty-eight cents, with like interest thereon from December 4th, 1866, until paid, and twenty dollars and seventy-five cents costs; that it do pay to M. B. Poitiaux three hundred dollars, with like interest thereon from Jan'y 31st, 1867, until paid; that it do pay to J. P. McCorkle two hundred and fifty dollars, with like interest thereon from Jan'y 15th, 1867, until paid; that it do pay the Philadelphia, Wilmington & Baltimore R. R. Co. seven thousand seven hundred and thirty-six dollars and seventy-four cents, with like interest thereon from September 13th, 1868, until paid; that it do pay to John J. Kelly two thousand three hundred and eighty-three dollars and forty-seven cents, with like interest thereon from March 1st, 1867, until paid; that it do pay to Louis Stix & Co. five hundred dollars, with like interest thereon from November 15th, 1866, until paid; that it do pay to Burton N. Harrison two thousand eight hundred and fifty dollars, with like interest thereon from June 1st, 1880, until paid; that it do pay to the Wilmington and Weldon R. R. Co. nine hundred and seventy dollars and seventy-three cents, with like interest thereon from September 1st, 1866, until paid; that it do pay to the Richmond, Fredericksburg and Potomac R. R. Co. five thousand three hundred and fifty-three dollars and twenty four cents, with like interest thereon from October 1st, 1866, until paid; that it do pay to the Seaboard and Roanoke R. R. Co. five hundred and ninety-seven dollars and eighty-eight cents, with like interest thereon from Oct. 1st, 1866, until paid; that it do pay to the Potomac Ferry Co. two hundred and ninety dollars and eighty-seven cents, with like interest thereon from October 1st, 1866, until paid; that it do pay to the Northeastern R. R. Co. eight hundred and twelve dollars and twenty-seven cents, with like interest thereon from December 1st, 1866, until paid; that it do pay to South Carolina R. R. Co. four thousand two hundred and thirty-three dollars and seventy cents, with like interest thereon from Dec. 1st, 1866, until paid; that it do pay to the Charlotte, Columbia and Augusta R. R. Co., to the Charlotte and South Carolina R. R. Co., eight hundred and eighty-one dollars and twenty-seven cents, with like interest thereon from October 1st, 1866, until paid; that it do pay to the Baltimore Steam Packet Co. three hundred and forty-seven dollars and seventy-six cents, with like interest thereon from November 1st, 1866, until paid; that it do pay to L. R. Smoot seven hundred and seventy dollars, with like interest thereon from August 1st, 1866, until paid; that it do pay to J. T. M. Barnes three hundred and fifty-six dollars and sixty-six cents, with like interest thereon from January 1st, 1867, until paid; that it do pay to General Joseph E. Johnston two thousand four hundred and

seventy-seven dollars and seventy-five cents, with like interest thereon from November 1st, 1866, until paid; that it do pay to Richard T. Allison one hundred and sixty-seven dollars and fifty cents, with like interest thereon from December 4th, 1866, until paid, and eighteen dollars and five cents costs; that it do pay to the Orange and Alexandria R. R. Co. three thousand one hundred and forty-four dollars and seventy cents, with like interest thereon from December 1st, 1866, until paid, and seven dollars and sixty cents costs; that it do pay to Franklin Harrison one hundred and thirty-seven dollars and fifty cents, with like interest thereon from January 1st, 1867, until paid, and twenty-two dollars and sixty cents costs; that it do pay to Andrew J. Joyce & Co. ninety dollars and seventy-six cents, with like interest thereon from October 20th, 1866, until paid and thirty-nine dollars and ninety cents costs; that it do pay to John D. Imboden one hundred and sixty-six dollars, with like interest thereon from May 1st, 1867, until paid; that it do pay to Ould & Carrington, one thousand two hundred and sixty-five dollars and ninety-eight cents, with like interest thereon from January 1st, 1867, until paid; that it do pay to John B. Baldwin one thousand and fourteen dollars and eighty cents, with like interest thereon from Jan'ry 1st, 1867, until paid; that it do pay to Page & Maury one thousand and sixty-one dollars and ninety-six cents, with like interest thereon from January 17th, 1866, until paid; that it do pay to S. D. Childs, seventy-five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to John Biddle fifty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to the "National Intelligencer" one hundred and twenty-four dollars and nineteen cents with like interest thereon from June 1st, 1867, until paid; that it do pay to E. R. Cunningham twelve dollars and seventy-five cents, with like interest thereon from June 1st, 1867, until paid, that it do pay to H. P. Gilbert & Co. twelve dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to the publisher of "Chronicle" two hundred and fifty-nine dollars and eighty-eight cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to John Farrall nineteen dollars and forty-eight cents, with like interest thereon from June 1st, 1857, until paid; that it do pay to J. W. Nairu & Bro. sixty-five dollars and twenty-one cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Thos. Ward & Thos. Kelly thirty-three dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Palmer & Sly forty-two dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Jas. S. Tapham & Co. twenty-nine dollars and thirty-two cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to R. P. Buford twenty dollars and twenty-three cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to

Oscar T. Keeler, one thousand two hundred and forty-two dollars and thirty-four cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to M. W. Hutcheson three hundred and fifty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to T. Titcomb seven dollars and twenty-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Henry St. Paul & Co. twenty-five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to James Conning five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Edward Shloss two hundred and twenty-nine dollars and eighty-seven cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Petty & Sawyer six hundred and forty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to the "Mobile Daily Tribune" thirty-one dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to "Advertiser & Register" one hundred and eighty-seven dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Young & Woods two thousand dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Charles W. Field three hundred and sixty-six dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Sims & Hamilton thirty-three dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to F. E. Marks two hundred and fourteen dollars and forty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to R. A. Jeffrey twenty-eight dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Floyd McCullough fifty-eight dollars and thirty-three cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to C. M. McMullin five dollars and fifty-seven cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Berger & Hoffman eight dollars and sixty-five cents, with interest thereon from June 1st, 1867, until paid; that it do pay to S. Downey ninety-one dollars and thirty-three cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to S. E. Leps forty dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to James D. P. Fenton one hundred dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to S. E Poor eighty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Sperdth & Inderriden fourteen dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid: that it do pay to J. C. Orr & Co. six dollars and five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Walters & Kraft twelve dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to T. H. Logan & Co. one dollar, with like interest thereon from June 1st, 1867, until paid;

that it do pay to Bushfield, Wallace & Co. one dollar and ten cents, with interest thereon from June 1st, 1867, until paid; that it do pay to J. W. Houck thirty-nine dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Hamilton & Nagle two dollars, with like interest from June 1st, 1867, until paid; that it do pay to the "Wheeling Intelligencer" forty-one dollars and sixty five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to the "Wheeling Register" thirty-five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to John G. Justice one hundred and thirty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Thos. K. Davis ninety-two dollars and ninety four cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to J. Reynolds forty-five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to D. S. Ryan sixty-one dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Atlantic and North Carolina R. R. Co. five hundred and twenty-five dollars and sixty-seven cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to the Raleigh and Gaston R. R. Co. one thousand one hundred and ninety-five dollars and thirty-three cents, with interest thereon from June 1st, 1867, until paid; that it do pay to C. W. Starbuck & Co. thirty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Fitch & Bro. seventeen dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to D. McFarland ten dollars, with like interest thereon from June 1st, 1867, till paid; that it do pay to J. W. Newman six dollars, with like interest thereon from June 1st, 1867, till paid; that it do pay to E. Raine two dollars, with like interest thereon from June 1st, 1867, till paid; that it do pay to Brown & Davis nineteen dollars and fifteen cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Sam'l Blair & Co. twenty-six dollars and sixty cents, with like interest thereon from June 1st, 1867, till paid; that it do pay to F. E. Snire & Co. thirteen dollars and eighty-two cents, with like interest thereon from June 1st, 1867, till paid; that it do pay to C. B. Prather & Co. ten dollars and seventy-five cents, with like interest thereon from June 1st, 1867, till paid; that it do pay to Maguire & Co. six dollars and twenty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Anderson & McFarland eleven dollars and ninety-one cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Wm. Huddart & Co. three dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to J. B. Schroder three dollars and seventy-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay H. G. Strobel five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to the Western Union Telegraph

Company one hundred and fifty dollars, with like interest thereon June 1st, 1867, until paid; that it do pay to John M. Owen eight dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Smith, Hawley & Co. thirty-five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to J. Black sixteen dollars and sixty-seven cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Capatinus Shaffer six dollars and twenty-five cents, with like interest thereon from June 1st, until paid; that it do pay to R. B. Smith forty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Peter Hoffman nine dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to J. Taylor ten dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to P. Doherty twenty dollars, with interest thereon from June 1st, 1867, until paid; that it do pay to John Taylor ten dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to John Dean twenty-two dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to C. D. B. Webster eighty-three dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay W. H. Glenn seventy-five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to E. Winchester sixty-nine dollars and thirty-four cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to J. J. Graham eighty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to J. L. Hawk forty-seven dollars and eighty-three cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to R. C. Kinkead one hundred and ten dollars and eighty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Sherman Bailey thirty-five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Earhart Bumans forty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to John Murphy twenty dollars and eighty three cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to F. W. Winchester twenty five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to William Grimes forty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to E. Shaffer fifty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to G. H. Swift fifteen dollars, with interest thereon from June 1st, 1867, until paid; that it do pay to H. M. Cottingham five hundred and eighty-five dollars and sixty-six cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to J. H. McDade one hundred dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to F. A. B. Jennings fifty-six dollars and sixty-six cents, with like interest thereon from June 1st, 1867, until paid;

that it do pay to R. W. Atwell seventy-five dollars, with like interest thereon from June 1st, 1867, until paid, that it do pay to P. S. Johnson one hundred and eight dollars and thirty-three cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to R. M. Demere ninety-five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to H. C. Grubb one hundred and thirty-one dollars and sixty-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Hunter & Gammel three hundred and eighty-four dollars and eighty-eight cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to A. H. Coutes thirty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to J. H. Nicholas ninety dollars and sixty-two cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to C. M. Davis six dollars and seventy cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to J. T. Jenkins & Co. sixteen dollars and sixty cents, with interest thereon from June 1st, 1867, until paid; that it pay to C. W. & W. R. J. Long & Billups fifty-nine dollars and forty-one cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to J. J. Ford fifty-two dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Ogletree & Grubb fifty-two dollars and seventy-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to S. S. Herman sixty-seven dollars and thirty-five cents, with like interest thereon from June 1, 1867, until paid; that it do pay to J. A. Witherspoon sixty-six dollars and ninety cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to the town of Athens, Ga., twenty-two dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Mrs. C. A. Johnston three hundred and fifteen dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to E. R. Hodgson & Bro. twenty-three dollars, with like interest from June 1st, 1867, until paid; that it do pay to Nicholson, Moss & Hutcheson seventy-five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to James Bond one hundred and thirty-five dollars, with like interest thereon from June 1st, 1867, till paid; that it do pay to Stockton & Co. ninety-six dollars and eighty-seven cents, with like interest thereon from June 1st, 1867, till paid; that it do pay to F. Arnold & Co. one hundred and thirty dollars and seventy-five cents, with like interest thereon from June 1st, 1867, until paid: that it do pay to G. A. Mercer twenty-five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Roswell King one hundred dollars and fifteen cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to the Alabama and Florida R. R. Co. two hundred and fourteen dollars and thirty-seven cents, with like interest thereon from June

1st, 1867, until paid; that it do pay to the Mobile and Great Northern R. R. Co. one hundred and fifty-five dollars and eighty-two cents, with like interest thereon from June 1, 1867, until paid; that it do pay to the Selma and Meridian R. R. Co. one hundred and seventy-four dollars and eighty-nine cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to W. M. Keblinger ninety-five dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to W. J. Keblinger one hundred dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to J. L. Brode one hundred and thirty-four dollars and fifteen cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Edwin W. Wade thirty-seven dollars and sixty-six cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to J. J. Terrill two hundred and ninety-one dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to J. B. Rhea forty dollars and ninety-one cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Margaret W. Day two hundred and seventy-four dollars and ninety-eight cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to the Richmond and Danville R. R. Co. four thousand eight hundred and twenty-three dollars and eighty-one cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to the Virginia Central R. R. Co. one thousand nine hundred and sixty-eight dollars and forty-three cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to the Richmond and Petersburg R. R. Co. three hundred and fifty-one dollars and nineteen cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to the Petersburg R. R. Co. four hundred and six dollars and eighty-two cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to "Richmond Dispatch" one hundred and sixty-nine dollars and eight cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to the "Richmond Times" seventy-five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to the "Richmond Enquirer" one hundred and twenty-one dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to the "Va. Free Press" twenty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to the "Winchester Times" twelve dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to the "Winchester News" ten dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to L. H. Fitch thirty-six dollars and ninety-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to E. W. Anderson fifty dollars, with like interest thereon from June 1st, 1877, until paid; that it do pay to the State of Virginia for taxes,

five hundred and sixteen dollars and seventy-two cents, with like interest thereon from June 1st, 1867, until paid; that it to pay to city of Richmond for taxes, one thousand dollars, with like interest thereon from June, 1st, 1867, until paid; that it do pay to Warwick & Barksdale fifty-four dollars and fifty cents, with like interest from June 1st, 1867, until paid; that it do pay to K. K. Douglas ten dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to D. T. Richards fifty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to J. B. Taylor five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Merwin & Simpkins ten dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to L. A. Elliott ninety-four dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Benton H. Martin one hundred and sixteen dollars and seventy-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to N. W. Belcher & Co. two hundred dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Stephen Lane two hundred and fifty-five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to H. Danford nine dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Abernathy & Co. ninety-two dollars and thirty-seven cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to E. & H. F. Andrews & Co. three hundred and fifty-five dollars and forty-one cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Thomas Chalmers one hundred and twenty-two ——— and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to A. M. Hays & Co. thirty-five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to T. Frank & Co. one hundred and twenty-three dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Gorden & Slater nine dollars and seventy-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Richardson & Co. twenty-three dollars and seventy-six cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Joseph Schneider fifty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to R. Ibbotson, Pres't, &c., one hundred and ninety-one dollars and eleven cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to D. Appleton & Co. fifty-seven dollars and seventy-nine cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to J. H. Foote one hundred dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to E. J. Houseman fourteen dollars and fifty cents, with like interest thereon from June 1st, 1867, till paid; that it do pay to W. S. Walker seventy-five dollars, with like interest thereon from

June 1st, 1867, till paid; that it do pay to R. Hendricks two hundred and fifty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to M. G. Farrh one hundred and twenty-nine dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to A. Cudworth seventy-six dollars and twenty-six cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to S. D. Easterly ninety-three dollars and seventy-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to W. S. Depanssure three hundred dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Hiram Harris three hundred and ninety-three dollars and seventy-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Cameron, Barclay & Co. thirty-seven dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Caustens & Jacobs seventeen dollars and fifty cents, with like interest thereon from June 1st, 1867, till paid; that it do pay to Geo. D. Ladd & Co. eighty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Sawner & Ferguson eighty-three dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to C. D. Franke six dollars and twenty-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Wm. Brookland sixty-three dollars and ninety cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Evans & Cogswell three hundred dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Benj. M. Innes twenty-two dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to S. P. Wiltbank five hundred and ninety-five dollars and ninety cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to C. J. Wiltbank two hundred and eighty-five dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Wm. Wyman one hundred and thirty-five dollars and twenty-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to P. Dougherty one hundred and twenty-seven dollars and twenty-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Thos. P. Bacon two hundred and forty dollars and eighty-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Wm. C. Ford ninety dollars and ten cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to A. T. Lavallette fourteen dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to C. C. Thompson sixty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to David Bulst sixty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to H. D. Basler twenty-one dollars and fifty-five cents, with like interest thereon

from June 1st, 1867, until paid; that it do pay to Benj. Flood seventeen dollars and fifty-eight cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Edward Beans thirty-eight dollars and thirty-two cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to H. Montgomery twelve dollars and two cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to B. N. Oakman twenty-five dollars and fifty-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to John H. Maxwell nine dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to James Millman ten dollars and fifty-two cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Fred. Nagle twenty dollars and thirty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Oglesby & Hodge seventy-six dollars and sixty-eight cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to James M. Cooper forty-nine dollars and twenty-five cents, with like interest from June 1st, 1857, until paid; that it do pay to McCaudless & Smith fifteen dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Tucker & Sapman six hundred and forty-seven dollars and fifty-nine cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Weinstein & Bro. twenty-four dollars, with interest thereon from June 1st, 1867, until paid; that it do pay to McCall & Monteith twenty-nine dollars and sixty-eight cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Fulton & Wilkes sixty-one dollars and one cent, with like interest thereon from June 1st, 1867, until paid; that it do pay to Philip L. Justice ninety dollars and eighty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Andrew Johann & Co. six dollars and six cents, with like interest thereon from June 1st, 1867, until paid: that it do pay to C. L. Cadwallader one hundred and thirty-two dollars and seventy-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Warner & Co. thirty-nine dollars and ninety cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to E. Katterlmas twenty-eight dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to James J. Martin two hundred and eighty-two dollars and twenty-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to William Mann forty-one dollars, with interest thereon from June 1st, 1867, until paid; that it do pay to R. McClure fifty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to James B. Smith & Co. one hundred and sixty-six dollars and forty-four cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to H. B. & A. Taylor one hundred dollars, with like interest thereon from June 1st, 1867, until paid; that

it do pay to Tryon Bros. & Co. two hundred and fifty-nine dollars and eighteen cents, with like interest thereon from June 1st, 1867, till paid; that it do pay to S. Bonaffon two hundred and seventy-nine dollars and thirty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Powers & Weightman one hundred and thirty-two dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Boughman, Thomas & Co. twelve dollars and twenty-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Thos. B. Eaton & Co. two dollars and eighty-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to A. A. Laws thirty-five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to F. A. Goddard, twenty-seven dollars and ninety-three cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Dickerson & Robelen fifty-one dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay W. A. Wisdom four dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Underwood & Conner fifteen dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to J. P. Smith eighteen dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Wm. McCauley twenty-five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Williamson & Co. one hundred and eighty dollars and nineteen cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Louis Green eighty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to C. H. & M. House ninety dollars, with like interest thereon from June 1st, 1869, until paid; that it do pay to Hollingsworth Warfield five thousand one hundred and seventy-one dollars and thirty-six cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to the Baltimore Gaslight Co. one hundred and fifteen dollars and forty-six cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Herman Born thirty-two dollars and twenty-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Adam Kahler ninety-one dollars and eighty-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Gibson & Kirk thirty-six dollars and forty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to "Baltimore Sun" twenty-eight dollars and twenty-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Henry Roth twenty-three dollars and twenty-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Bibb & Co. two dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Fred'k Oelmann fourteen dollars and sixty-six cents, with like interest thereon from

June 1st, 1867, until paid; that it do pay to L. Green one hundred and twelve dollars and twenty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Caulfield Bros. & Co. three hundred and seventy-three dollars and sixty-six cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Burton and Irving thirty-one dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Andrews & Thompson sixteen dollars and eighty cents, with like interest thereon from June 1, 1867, until paid; that it do pay to George Brown forty dollars and forty-one cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Geo. W. Webb & Co. twenty-five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Hodges Bros. thirty-six dollars and sixty cents, with like interest thereon from June 1, 1867, until paid; that it do pay to Cushings & Bayly thirty-one dollars and sixty-two cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Schwardtman & Co. twenty-nine dollars and thirteen cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Rudolph Oehl eighty-eight dollars and thirty-three cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Daniel Seaton one hundred and fifteen dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to John Watkins twenty-one dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to A. J. Smith sixty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to McC. Y. Barry one hundred and thirty-nine dollars and twenty-three cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to W. A. C. Bayly sixty-two dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Stephen Cremin thirty-two dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to George Bishop thirty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to G. A. Schwartzman forty-three dollars and eighty-eight cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to F. B. Berkley one hundred and fourteen dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Milton Bull one hundred and fifteen dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Henry Vaughan fifty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to George Bond fifty-seven dollars and five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Andrew O'Meara forty-five dollars and fifty-seven cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to James Hood twenty-four dollars and fifty-six cents, with like interest thereon from June 1st, 1867,

until paid; that it do pay to W. H. Tibals thirty-four dollars and sixty-eight cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Edward McGeehan fifty-seven dollars and eighty-four cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to F. Grill nineteen dollars and twenty-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Jacob Arnold thirteen dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to John Manly twenty-three dollars and fifty-seven cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Thos. McCullough twenty-five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Thos. Burns twenty-five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to A. Boyce twenty-eight dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to F. Craig ten dollars and eighty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to J. Schleiffer seven dollars and ninety-four cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to W. F. Anderson seventeen dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to George McAllister eighteen dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to S. Bishop eleven dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Martin Clark ninety-two dollars and seventy-three cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to George Clark sixty-three dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to S. S. Mann one hundred and sixteen dollars and twenty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to H. Frank & Co. twenty-four dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Mrs. S. C. Ricketts twenty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to C. E. Needles eight dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to E. Whitman & Sons ten dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to J. H. Walzl thirty nine dollars and twenty-two cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to McDowell, Robinson & Co. one hundred and fifty-six dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to John T. Watkins fourteen dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Hill & Mitchell seventeen dollars and sixty-nine cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to R. Sinclair & Co. thirty-three dollars and ninety cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to

Boerman and Littlebaum thirty-nine dollars and twenty-seven cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Weiglin & Heilner eleven dollars and eighty-two cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Walter S. Moore & Co. twenty-six dollars and seventy-six cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to J. W. Ebert & Co. seven dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Thomas D. Johnston twelve hundred and seventy-four dollars and forty-one cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Bolton Brothers seventeen dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to David Anderson sixty-seven dollars and seventy-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to W. H. Oler nineteen dollars and fifteen cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Kelly & Piet two thousand two hundred and twenty-two dollars and forty-seven cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to "Evening Transcript" one hundred and sixteen dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Montgomery, Slade & Co. six dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to Edward Sinn three dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to P. P. Pendleton one hundred and six dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to J. A. Pierce one hundred and fifty-five dollars and fifty-five cents, with like interest thereon from June 1st, 1837, until paid; that it do pay to D. Claude twenty-five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to W. H. Glannett thirty-six dollars and twenty-five cents, with like interest thereon from June 1st, 1897, until paid; that it do pay to Hild, Wammelle & Mitchell four dollars and forty-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to R. H. Tall four dollars, with like interest thereon from June 1st, 1867, until paid; that it do day to James T. Ball fifteen dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to John Nugent seventy-five dollars and sixty-nine cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to A. S. Abell & Co. twenty-one dollars and forty-two cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Ammidon, Cranbie & Co. sixteen dollars and twenty-six cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to G. C. Taliaferro seventy-five dollars, with like interest thereon from June 1st, 1867, until paid. that it do pay to C. M. Davis seventy-one dollars and sixty-six cents, with like interest thereon

from June 1st, 1867, until paid; that it do pay to C. Yengling three hundred and fourteen dollars and eighty-five cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Thos. Dobbins seventy-five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to W. H. Gordon twelve dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to R. A. Crawley one hundred and sixty-five dollars, with like interest thereon from June, 1st, 1867, until paid; that it do pay to Edward L. Clark fifty-six dollars and twenty-two cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to A. N. Stewart one hundred and twenty dollars and fifty cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Thos. H. Cook one hundred and forty-nine dollars and fifty cents with like interest thereon from June 1st, 1867, until paid; that it do pay to Benj. P. Grymes sixty dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to W. L. Keller one hundred and forty-one dollars and ninety-seven cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to Geo. Walters ninety-five dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to A. J. Smith one hundred dollars, with like interest thereon from June 1st, 1867, until paid; that it do pay to H. Heth three hundred and seventy-three dollars and sixty-six cents, with like interest thereon from June 1st, 1867, until paid; that it do pay to W. D. Miller one thousand one hundred and thirty-six dollars and twenty four cents, with like interest thereon from June 1st, 1867, until paid; and the court, without at this time specifying or determing the order of priority in which said debts due by the said National Express and Transportation Company shall be paid out of any property and assets conveyed by the said deed of trust of the 20th day of September, 1866, but expressly reserving all such matters for future consideration, doth adjudge, order and decree that the several classes of debts secured in and by said deed be paid in the order of priority in which it shall hereafter appear, upon inquiry, they are preferred, if such inquiry shall become necessary and proper.

And it appearing to the court that the calls for subscriptions heretofore made by the said company, amounting to twenty per cent., have been exhausted, or are now unavailing, and that the said company has now no property or assets out of which said debts or any part of them can be made, except the uncalled-for and unpaid subscriptions to the capital stock, amounting to eighty per cent., the right to receive and collect which, according to the contracts of subscription, as well as the former calls, was conveyed and assigned in trust as aforesaid, and constitute a trust fund in the hands of the

subscribers, which is primarily liable for the debts of the company; and it further appearing that the court, that by the second and fourth clauses of said deed of trust, the trustees therein named were clothed with ample authority and power to collect, by suit or otherwise, all of the debts, claims and moneys payable to said company, which were assigned by said deed; and it further appearing to the court, that on account of death, removal, insolvency, and other causes, much of said uncalled-for and unpaid subscriptions has been lost, and great difficulty has been encountered in realizing what remains good from stockholders scattered in and among so many different and distant localities and states, and that it is necessary and proper that at least thirty per cent. of said subscriptions be now called for and required, in order to meet the debts of said company and the costs and expenses of collecting and administering said fund. And it further appearing to the court that the said company has long since ceased and abandoned its business, and that for about fourteen years there has been no meeting either of the stockholders or of its board of directors, it is adjuged, ordered and decreed that a call and assessment be, and the same are hereby made upon the capital stock and stockholders of the said National Express and Transportation Company of thirty per centum of the par value of said stock, being thirty dollars on each and every share thereof, and that the stockholders of said company, and each and every of them and their legal representatives and assigns, be, and they are hereby, severally required to pay the several amounts hereby called for and assessed to the said John Glenn, of the city of Baltimore, in the state of Maryland, substituted trustee in said deed of trust from the said company, of the 20th day of September, 1866; and the said trustee is hereby authorized and directed to collect and receive the said call and assessment, and to take such prompt steps to that end, by suit or otherwise, and in such jurisdictions, as he may be advised; and if the amount realized from this call and assessment shall prove to be insufficient for the purposes of this decree, liberty is reserved to the said creditors and the said trustee to move the court for such further assessment as may be necessary and proper.

And after paying the necessary and proper costs and expenses of executing this decree, the said trustee is directed to deposit his collections in the Planters' National Bank of Richmond, to the credit of the court in this cause, or in such other bank as may, from time to time, be designated by the court, and to file the certificates of such deposits with the clerk of this court; and said trustee will make report to the court, from time to time, of his proceedings under this decree, and will settle his accounts, from time to time, before one of the master commissioners of this court, not permitting any six months to intervene between such settlements, and

such commissioner is directed and required to make report to the court of such setlements as soon as made.

And upon the coming in of such report, as soon as sufficient sums shall be collected, the court will take order as to the proper distribution of the fund among those entitled thereto.

The answer of John Blair Hoge and John J. Kelly, referred to in foregoing decree of Dec'r 14th, 1880, is in the words and figures following, to-wit:

Answer.

John W. Wright, sheriff, &c., and as such administrator of W. W. Glenn, who sued, &c., against John Blair Hoge and John J. Kelly, impleaded with the National Express and Transportation Company, and others,	In the Chancery Court of the city of Richmond, Va.

The separate and several answer of John Blair Hoge and John J. Kelly, as surviving trustees, named with others as defendants in the bill of complaint, originally filed by Wm. W. Glenn as complainant, now deceased, respectfully shows to the court as follows:

These defendants, now and at all times hereafter, saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said "bill of complaint contained for answer thereunto, or to so much or such parts thereof as said defendants are advised is material for them to make answer unto, answer and say that these said defendants deny each and every allegation in the complaint made, except such as hereinafter specially admitted.

The said defendants admit that the complainant, William W. Glenn was, and that his legal representative now is, one of the creditors of said, The National Express and Transportation Company, in the bill of complaint mentioned.

And said defendants admit that said National Express and Transportation Company was duly incorporated by the legislature of the State of Virginia on the —— day of ——, 1865, as in that behalf is alleged in the bill of complaint.

And said defendants admit further, that said company accepted said act of incorporation, and proceeded to conduct its business in pursuance thereof until the 20th day of September, 1866, when said company having become much embarrassed in its affairs, and owing large debts to various persons, made and executed a deed of trust for the benefit of its creditors to these defendants, John Blair Hoge and John J. Kelly (and to one C. Oliver O'Donnell, who is

named as a defendant, but who, as these defendants are informed, and believe, is now dead), dated the 20th day of September, 1866, which thereafter to said trustees was duly delivered, and which was duly recorded in the city of Richmond, in the city of Baltimore and elsewhere, as is in the bill of complaint in that behalf alleged.

And said defendants admit further that the assets of said company, to which its creditors have to look mainly for the payments of their debts, consist now only of the amounts contracted to be paid by the subscribers to its capital stock, as in the bill of complaint in that behalf is alleged.

And said defendants admit that the total number of shares of the stock of said company which had been subscribed for at the date of said assignment was about $40,044, each share being of the par value of $100, and said subscriptions representing the aggregate of about $4,004,400, and that on the 29th day of October, 1866, the condition of said company, with reference to its stock and debts, was and was reported at a meeting of stockholders, as in the bill of complaint in that behalf is alleged.

And said defendants admit that the subscribers to the capital stock of said company resided, and now reside, in many states, and not within the jurisdiction of any one court;—

And that by the terms of the subscription the subscribers were bound to pay the amount of said subscription as and when the same should be called for by said company;—

And that the total amounts of assessments or calls made by said company upon its stockholders was twenty per cent. of the amount of the subscriptions; and that the amounts paid in money or by notes upon said calls of twenty per cent. are correctly set forth in the bill of complaint;—

And that a very small part of the said assessments to the amount of twenty per cent. which remained unpaid at the date of said report has been since paid or collected from the delinquent stockholders;—

And that no subsequent call or assessment was made upon its stockholders by said company, and that eighty per cent. of the amount of said subscriptions remain uncalled for and unpaid;—

And that said trustees were not requested to take possesion of said trust estate, under said deed, until on or about the 3rd day of November, 1866, and that in the meantime nearly all of the visible property of said company had been levied upon and taken under legal process by its creditors, and that the amount of the same was wholly insufficient to pay the debts of said company.

And that said company had hypothecated, or otherwise used and parted with a considerable amount of the notes and other obligations received by it from stockholders on account of amounts due by them on said calls, and that the actual amount of money realized and received by said trustees under said assignment, was not sufficient

to pay the debts due the preferred creditors of the first class mentioned in said deed of trust.

And, that of the amount of the said assessments upon the subscribers of twenty per cent., a large part cannot be collected at all, by reason of the insolvency of the subscribers, and that a large part of said assessments has been lost by lapse of time, and cannot now be collected.

And, that as to the debts due upon said unpaid assessments, said trustees have been hindered and delayed in the collection of the same by adverse litigation in the state of Maryland and in the state of New York, and in other states; and, that the right of said trustees to receive and collect the debts due the company by subscribers on said assessments has been called in question in some of the suits, and validity of said deed of trust has been disputed.

And, that in some of said suits, said trustees have been enjoined from proceeding to collect the debts due said company, and said trustees have thus far been able to collect very little of said debts by reason of the difficulties interposed by said litigation.

And that the debts due said company and which ought to be applied in payment of its creditors, are either now lost in a great part or are in danger of being lost, and are not now available for the payment of said creditors.

And, that even if said trustees can surmount the embarrassments and difficulties which have prevented them hitherto from realizing said assets, the amount which can be realized from all the property which passed to such trustees, and, which could, under any circumstances, be realized by them, would be entirely inadequate to pay the just debts of said company.

For that, as said defendants are advised by the true construction of said deed of trust, no part of the eighty per cent. of subscriptions to said capital stock, which had not been called for by said company from its subscribers, passed to said trustees, nor any power to sue for or to collect said subscriptions so uncalled for, but that the relations between said company and its subscribers and their legal rights and obligations as to said uncalled for part of said subscription, remained unaffected by said deed of trust.

And said defendants are advised that under said deed of trust said trustees acquired no right to sue a subscriber for his subscription to said stock, except to the extent that said company could sue such subscriber; and said defendants are advised that said company could not sue one of its subscribers for his subscription, unless and until said company has first made an assessment or call upon such subscriber therefor. And said defendants are advised that, allowing said deed to have full legal validity elsewhere and allowing said trustees to proceed without impediment to collect all the debts due the company collectable by them, the pro-

visions of said deed of trust are wholly inadequate to provide for the payment of the debts of said company, many of whose creditors are in very needy circumstances, and nearly all of whom have waited nearly fourteen years for the satisfaction of their just demands.

And said defendants are advised that if said company were now to levy an additional assessment upon its stockholders, it is doubtful whether the right to sue for and collect such assessments would vest in said trustees under said deed; and in attempting to collect the same, said trustees would meet with this additional embarrassment, besides those which have attended their efforts to collect the calls already made and unpaid at the date of said deed, and which were intended to be conveyed to them by said deed.

And said defendants are advised that if it be held that any new call to be made by said company would not pass to said trustees, and they would not for any reason be entitled to collect the amount thereof, but that the amount of such calls would be due to the said company by the stockholders, it would lead to ruinous and disastrous consequences, inasmuch as the creditors of said company would endeavor to reach the amounts due to said company under such additional call, from its solvent stockholders, and much thereof would be lost in the expenses of litigation, and an equitable and just division thereof among the creditors would be wholly defeated, as said defendants are advised that a large part of the debts of said company are too small to justify the holders of them, who are poor men, in entering upon such a race of diligence.

And said defendants are advised that it will be necessary to resort to the residue of said subscriptions in order to provide the requisite means to pay the debts of said company, and that said subscriptions, so far as the same are unpaid, constitute a trust fund for the payment of the debts of said company, and that the same can and ought to be collected and so applied.

And that, inasmuch as the stockholders reside within different jurisdictions, it is impossible for the creditors to make them all defendants in any one court and compel an equitable contribution from them, to raise a fund sufficient to pay the debts of said company.

And that to proceed against the stockholders who are within the jurisdiction of each court would increase litigation, and would lead to other injurious consequences. For said defendants are advised that should the creditors proceed against the stockholders within the jurisdiction of any one court, they would be entitled to compel said stockholders to contribute to the extent of their unpaid subscriptions, without reference to the contribution that should be made by other stockholders not within said jurisdiction, and would force those so compelled to contribute to resort to stockholders

elsewhere for contributions and indemnity, and thus greatly multiply litigation and expense.

And the said defendants are advised that in view of the diff—ulties and embarrassments which have attended the efforts of said trustees to collect so much of the debts of said company as was intended to be conveyed to them by said deed of trust, and in view of the further and additional difficulties that would attend any attempt on the part of said trustees to collect any new call to be made by said company, and in view of the ruinous expense, loss and injustice that would attend an attempt on the part of said company to collect such new calls as debts due to itself, and in view of the necessity there is that resort must be had to the subscribers to provide means for paying the debts of said company, and in view of the expense, multiplicity of litigation, and other difficulties that would attend the proceeding of the creditors against said stockholders direct in the different states and jurisdiction in which said stockholders reside, and in view of the unquestionable right of said creditors in some form to compel payment from said stockholders, the said creditors are entitled to the interposition of a court of equity for their relief.

And said defendants are advised that said creditors are entitled to have an account taken of the debts of said company, and of the assets now available for the payment of the same, other than the unpaid subscriptions, and that they are entitled to have an ascertainment of the amount of said uncalled for and unpaid subscriptions which will be required to provide means for the payment of the debts of said company in full, and that in ascertaining the amount so required, a proper allowance should be made for probable losses by reason of insolvency of stockholders and otherwise, and for the expenses of collecting the same and for the expenses of this proceeding, and to have a decree requiring said company to make a call or assessment upon its stockholders, sufficient to provide said necessary amount, and to have the debts created by such call placed in the hands of some person or persons to be appointed by this court, with adequate authority and power to sue for, collect and receive the same, and bring the same into this court to await its further order.

And said defendants admit that before the questions relating to the powers, rights, and obligations of said trustees under said deed of trust can be finally decided, there is imminent danger that a large part of the said subscriptions to the stock of said company may be lost by the insolvency of the subscribers and other causes.

And that the creditors are entitled to have said deed of trust pronounced upon and construed by this court, and to have the powers and duties of the trustees thereunder, and the rights of the creditors ascertained and defined.

And said defendants are advised that, as said company is a Virginia corporation, and as said deed of trust conveys nothing but personal property, whatever force and effect may be given to the same by the law of this State will be respected and enforced in the courts of other States when said deed may be drawn in question.

And, so said defendants are advised, that the creditors of said company are entitled to have the judgment of this court as to the validity and scope of said deed of trust under the laws of Virginia.

And said defendants admit that there has not been recently any election of officers by said company, but said defendants are advised that under its charter and the laws of Virginia the officers of said company last elected remain such officers until the election and qualification of their successors, and are competent to exercise the powers of such officers.

And said defendants are further advised that under the laws of Virginia the corporate franchises of said company and its existence as a corporation continue in full force and effect until the affairs of said company shall have been fully settled and its debts paid.

And said defendants admit that William H. Perot, of Baltimore, is the president of said company, —— ———, of ———, is the vice-president thereof, and that the board of directors thereof are William Devries and D. J. Foley, of Baltimore; M. G. Harman, of Staunton, Virginia; Joseph R. Anderson, of Richmond; F. P. Zimmerman, of Augusta, Georgia; J. Carter Marbury, of Washington, D. C; Wm. H. Webb, of New York city, and Lorenzo Norvell, of Lynchburg, Virginia, or that such of said persons as are now living, constitute said board of directors.

Further answering (the defendant, Hoge, herein answering upon information and belief only) these defendants allege and show to the court that said The National Express and Transportation Company continued to carry on its regular and usual express and transportation business for some time after the execution and delivery to said trustees of said deed of trust of September 20th, 1866; that the defendant, Kelly, was theretofore and in the year 1866 the vice-president of said The National Express and Transportation Company, and that in or about the month of August, 1866, the defendant, Kelly, was appointed to be the general superintendent of said company, thereafter having and exercising general charge of and supervision over the affairs and business of said company; that as such officer of the company, and in one or the other of said capacities, the defendant, Kelly, had, during the time the company was carrying on a general transportation business, frequent and free access to and use of the books of the company kept, whether at the principal office of the company or at its branch offices, and in fact frequently saw and consulted many or all of said books; that until in or about the month of

November, 1866, the said books were in the charge and custody of the several officers or employees of the company whose duty it was to keep and write up such books respectively; that in or about the month of ———, 1866, such of said books as show the liabilities and assets of the company, the list of subscribers to the capital of the company, the shareholders of the company, the minutes of the proceedings of meetings of shareholders or directors of the company, the assessments levied upon the subscribers or shareholders, the amounts of such assessments paid in, and who made such payments, and generally the books and papers needed by any one who would attempt to enforce against subscribers or shareholders the liabilities of the company, passed into the charge and custody of the late Thomas G. Pratt, of Baltimore city, Maryland, who had been theretofore appointed, by decree of a Maryland court, to be receiver of the assets, &c., of said company; that said books, as these defendants are informed and believe, remained in the charge and custody of said receivers until in or about the month of ———, in the year 1867, when said decree of the Maryland court was revoked and vacated and said books were surrendered and delivered to the defendant Kelly, in whose charge and custody they have ever since remained and been in the city of New York; *New York;* that said defendant, Kelly. has never heretofore afforded or authorized the use of, or any access to, said books or papers, or any of them, to any creditor of the company, or to any other person whatever except the attorney and counsel of said trustees, and the attorney and counsel of the said company in the city of New York, who was, as these defendants are are informed and believe, heretofore duly elected and retained by the company in and about the various litigations in which the company has, since the autumn of the year 1866, been a party in New York, and who has remained to this day the attorney and counsel for the company, and in charge of such litigations in the company's behalf in New York, and that as far as these defendants know, or are informed, no creditor of the company has in fact consulted, had access to, or seen the said books or papers, or any of them, since they came into the custody of the defendant, Kelly, as aforesaid.

Further answering, these defendants show to the court that many and various proceedings, chiefly in the courts of Maryland, or in the courts of New York, have (in which states a large part, if not the larger part, of the outstanding shares of said company are held), since the 20th day of September, 1866, been conducted by the company, and by the said trustees, at a large expense for counsel and otherwise, in the effort to establish the rights of the company and of the trustees against persons indebted to the company, but that, in New York, there is an injunction yet in effect issued by the supreme court of that

state, enjoining both the company itself and the said trustees from collecting any debts, whatever, due to the company in that state, the action in which said injunction was granted having been brought by one of the shareholders in his own behalf and in behalf of all others, and the same being now still pending, whilst the trustees are without funds to defray the further expenses of counsel and otherwise, which will be necessarlly incurred in and by further proceedings in that suit, in which the officers of the company have heretofore and for several years held aloof, and afforded the trustees no assistance whatever; and that the situation in Maryland and in other states is, as these defendants are informed and believe, very similar to that in New York, no practical success having as yet been had in efforts to collect the amounts due the company or the trustees by debtors residing there—the officers of the company doing nothing for the benefit of the creditors of the company, and the trustees themselves being without funds to continue in active performance of their trust, in the teeth of the determined and alert opposition of the company's shareholders everywhere to, and any and every attempt heretofore made to compel them to meet and liquidate their liabilities.

Further answering, the said defendants, John Blair Hoge and John J. Kelly, the surviving trustees as aforesaid. say what they have, and each of them, separately for himself, says that he has no money belonging to said company, or to any creditor of said company, now in possession or under control, and that they have no other property of said company in possession or under control, *except that* the defendant Kelly has, as aforesaid, custody and charge of certain books and papers of the company hereinbefore mentioned or referred to; and that any account which may now be rendered or stated by these defendants would show these defendants are themselves out of pocket in the effort to perform the said trust, each of these defendants having necessarily expended in the said efforts to perform his duties as such trustee, an amount of money considerably in excess of any and all the inconsiderable moneys he has been able to collect under said deed of trust—the great body of the debts of the company remaining meantime unpaid.

And these defendants submit to this honorable court that all and every the matters in the said complainant's bill mentioned and complained of are matters which may be tried and disposed of at law, &c., &c.

And these defendants deny all unlawful combinations and confederacy in the said bill charged—without that, &c., &c.

State of Virginia:

John J. Kelly, being duly sworn, says that he is the defendant of

that name in the action above entitled, and is one of the trustees named in said deed of trust; that he has read the foregoing separate answer made by him and by the defendant, John Blair Hoge, as surviving trustees, to the complainant's bill, and that he knows the contents thereof; and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Sworn to before me this 26th day of April, 1880.

O. G. KEAN, N. P.

The answer of John Blair Hoge, referred to in foregoing decree as filed Dec'r 14th, 1880, is in the words and figures following—to-wit:

ANSWER OF J. B. HOGE.

The answer of John Blair Hoge, trustee, to an original and an amended and supplemental bill filed against him and others by W. W. Glenn, &c., suieng, &c., against the National Express and Transportation Company and others in the chancery court of the city of Richmond.

This respondent, saving, &c., for answer, says that he adopts in the main the answer of his co-defendant and trustee, John J. Kelly; that he is now a judge of one of the circuit courts of the state of West Virginia, and is so situated that he could not give active and personal attention to the business involved in this litigation and is willing to resign his trust, and does hereby resign it, if deemed necessary and proper by the court; but that he is willing, nevertheless, if the continuance of his trusteeship should be considered advantageous to the ends of justice in attaining the objects of the suit, to allow his name to be used as such trustee and to perform such active duties of his trust as may not be incompatible with his judicial duties as one of the judges of the circuit court of West Virginia.

And now having fully answered, &c., this respondent prays to be hence dismissed, &c.

JOHN BLAIR HOGE.

Affidavit to the foregoing answer is hereby waived.

JOHN HOWARD, p. q.

July 5th, 1880.

The amended and supplemental answer of John J. Kelley referred to in foregoing decree is in the words and figures following, to-wit:

A. & Sup'l Answer of John J. Kelly.

The amended and supplemental answer of John J. Kelly to an original and amended and supplemental bill filed against him and others in the chancery court of the city of Richmond by W. W. Glenn and his administrator, suing for the creditors of the National Express and Transportation Company.

This respondent for further answer to the said bill, says that he is willing to resign and renounce, and does hereby resign and renounce, his office as one of the trustees in the deed in the proceedings mentioned, bearing date the 20th day of September, 1866, made by the said National Express and Transportation Company to John Blair Hoge, C. Oliver O'Donnell, and himself, in trust for the benefit of his creditors. But respondent prays that when funds shall come under the control of the court in this cause he may be reimbursed for the sums expended by him and for his services in the performance of his duty as trustee.

And now having fully answered the said bills he prays hence to be dismissed.

JOHN J. KELLY.

The within answer may be received without affidavit.

JOHN HOWARD, p. q.

Nov. 30th, 1880.

The amended and supplemental report of Com'r Otho G. Kean, referred to in foregoing decree, and dated December 8th, 1880, and the exhibits therewith, are in the words and figures following, to-wit:

Amend'd & Supple. Report.

Commr's Office, No. 1113 Main street,
Richmond Dec'r 8th, 1880.

Glenn's adm'r
v.
National Express & Transportation Co.

To the Hon. Ed. H. Fitzhugh, judge of the chancery court for the city of Richmond:

By request of John Howard, Esq., of counsel for W. W. Glenn's

adm'r, and, as I am informed, with the approval of the court, I now submit the following as a supplement to my report filed in this cause June 19th, 1880:

I. Herewith returned are four papers, marked respectively "A," "B," "C," and "D." They are extracts, taken from the record book of the board of directors of the defendant company. I have carefully compared them with the originals in said book, and find and hereby certify them to be true copies.

II. In my former report, filed June 19th, 1880, a statement was rendered, showing an assignment of 20 per cent. on the par value of *unpaid* stock—being 80 per cent. of the par value of the orignal stock—was considered enough to satisfy the debts due by the defendant company. This statement should be chauged, I think, in two particlars. *First*, The assessment whatever it be, should be laid on the par of the stock, and not on that amount, less assessments heretofore made. In other words, the par or face value of the company's stock should furnish the basis of the assessment. *Secondly*, On reflection I am satisfied that the 20 per cent. assessment suggested, if not recommended, in my former report, is too small, and that the same should be increased to 30 per cent., if such increase is within the discretionary power of the court. The reasons seem sufficiently obvious. The stockholders, by whom the enormous debt of the defendant company is due, are very numerous; as shown by evidence in the cause, they are widely dispersed; many are, doubtless, insolvent, many dead, and, consequently, the proceedings necessary to enforce any assessment laid by the court must be exceptionally expensive. The assessments should provide for these costs, &c. Moreover, as many of the debtors are insolvent, any assessment aggregating the exact amount of the defendant's liabilities would manifestly fail to satisfy them; and thus a second, and perhaps a third, might become necessary, each attended with its heavy costs and expenses. It would seem better, therefore, in the interests of debtor as well as creditor, that an assessment should be laid at the start on which enough may realized to satisfy the debts of the company. And this is accordingly recommended. Should more than enough be collected on a 30 per cent. assessment, it will be more easy, as well as less expensive, to *return* the overplus to the stockholders, than it would be (in the event of deciency) to *collect* a second one.

The following statement is based on the forgegoing views:

Par value of 40,044 shares at one hundred dolls. per share,	$4,004,400 00
On which an assessment of 30 per cent. would give, (for payment of the company's debts and the costs and expenses of collection,)	1,201,320 00

This sum greatly exceeds, it is true, the amount of debt which, with probable costs, is about $650.000.00, but I fix the assessment at 30 per cent., because I think it safe to assume that not more than 50 per cent. of any assessment will be realized.

Respectfully submitted,

OTHO. G. KEAN, Comm'r.

Fee, $10.

EXHIBIT "A,"

With Com'r Kean's Supp'l Report, dated Dec'r 8th, 1880.

Extract from proceedings of the board of directors of The National Express and Transportation Company, at a call meeting held Nov'r 1st, 1866.

[Page 149.]

The resignation of Mr. Echols was offered and accepted.

Mr. Joseph R. Anderson, of Richmond, was unanimously elected a director, vice Echols resigned, and took his seat,

* * * * * * * * * * *

[Page 151.]

Resolution offered.

By Mr. Anderson.

Resolved, That the president, or in his absence, the vice-president be instructed to apply to the General Assembly of Virginia, if practicable, on the first day of the ensuing session, to make such amendments of the charter as were indicated by the stockholders at their recent meeting, and in addition thereto an amendment authorizing the company to buy in the stock of delinquent stockholders if, upon legal advice, there be no objection thereto.

Adopted unanimously.

J. V. H. ALLEN, Secretary. M. G. HARMAN, Vice-President.

STATE OF VIRGINIA—*City of Richmond, to-wit:*

I do hereby certify that the above is an extract from the record

of the board of directors of The National Express and Transportation Company, with which the said extract has been by me carefully compared and found correct.

Given under my hand this 8th day of December, 1880.

OTHO. G. KEAN,
Comm'r chancery court, Richmond.

EXHIBIT "B,"

With Com'r Kean's Supp'l Report, dated Dec'r 8th, 1880.

Extract from by-laws and regulations of The National Express and Transportation Company, adopted by the board of directors Dec. 6th, 1866.

8th by-law—page 47 of record:

"A majority of the directors shall be necessary to form a quorum for the transaction of business, but a less number than five directors may adjourn from time to time until a majority be present.

Vacancies in the board, caused by death, resignation, or disqualification, shall be filled by a majority of the votes of all the remaining directors."

P. T. MOORE,
Secretary.

J. E. JOHNSON,
President.

STATE OF VIRGINIA—*City of Richmond, to-wit*:

I do hereby certify that the above is an extract from the record of the board of directors of The National Express and Transportation Company, with which the said extract has been by me carefully compared and found correct.

Given under my hand this 8th day of December, 1880.

OTHO. G. KEAN,
Comm'r chancery court, Richmond.

EXHIBIT "C,"

With Com'r Kean's Supp'l Report, dated Dec'r 8th, 1880.

Adjourned meeting.

Baltimore, Sept. 18th, 1866.

Present:
J. E. Johnston, President.

Austin Dall,
H. G. Fant,
D. J. Foley,
Wm. Devrics.

By Mr. ——.

Resolved, That the president of this company be and is hereby directed to execute and acknowledge for record a deed conveying all the property of this company, of every species whatsoever, to John Blair Hoge and John J. Kelly in trust, to secure its creditors upon such terms as he may deem equitable, substantially in accordance with the draft of the deed submitted to this meeting of the board, and with special regard to the pledges of the company already made to the Bank of Commerce of Baltimore, and to the Baltimore and Ohio Railroad Company.

The said deed will be delivered to the trustees named therein, and recorded as soon as practicable.

Adopted unanimously.

On motion, meeting adjourned.

J. V. H. ALLEN, Secretary.

STATE OF VIRGINIA—*City of Richmond, to-wit:*

I do hereby certify that the above is an extract from the record of the board of directors of the National Express and Transportation Company, with which the said abstract has been by me carefully compared and found correct.
Given under my hand this 8th day of December, 1880.

OTHO G. KEAN, Comm'r,
Chancery Court, Richmond.

EXHIBIT "D,"

With Comm'r Kean's Supp'l Report, dated Dec'r 8, 1880.

Copy of resolutions of board of directors of The National Express and Transportation Company, passed at an adjourned meeting held Aug. 9th, 1866:

Ordered, That there be appropriated and set apart one-half of the first receipts from assessments on stock, old and new, to be paid

over ratably to the Baltimore and Ohio Railroad Company and to the Bank of Commerce, in proportion to their respective claims against the company. And if in this way said debts be not paid within fifty (50) days, or at any time sooner if required by said railroad company or bank, the president of this company is directed to execute and deliver any assurance, mortgage, assignment or conveyance which the counsel of said bank and railroad company, or the counsel of either of them may advise for the more perfect security of said railroad company and bank, and to save them harmless in any contingency. And the treasurer of this company is hereby directed to regard such receipts as specifically appropriated to these purposes, and to pay over the same as stated without further order, said assurance, mortgage, assignment or conveyance, to cover any property, effects or claims of this company that may be designated by said R. R. Co. and bank, or either of them. No other lien on the property, effects or claims of this company, shall be given or allowed so as to interfere with the honorable obligations involved in this proposition.

That the president of this board cause to be delivered to said R. R. Co. and bank, each, a duly stamped copy of the foregoing order, as an engagement and agreement of this company, in consideration of forbearance to fulfil the above stipulations in regard to the security of their debts.

Adopted unanimously.

STATE OF VIRGINIA—*City of Richmond, to-wit:*

I do hereby certify that the above is an extract from the record of the board of directors of the National Express and Transportation Company, with which the said extract has been by me carefully compared and found correct.

Given under my hand this 8th day of December, 1880.

OTHO G. KEAN, Comm'r,
Chancery Court, Richmond.

The following paper was filed in this cause on the 14th day of December, 1880; and the same is as follows:

ACT OF INCORPORATION AND AMENDMENT.

An Act

To amend and re-enact an act to incorporate the Southern Express

Company, passed March 22d, 1861, and to incorporate the National Express and Transportation Company.

Passed December 12, 1865.

Be it enacted by the general assembly of the State of Virginia, that the act passed March twenty-second, eighteen hundred and sixty-one, entitled an act to incorporate the Southern Express Company, be amended and re-enacted, so as to read as follows:

"1. Be it enacted by the General Assembly of Virginia that Joseph E. Johnston, William L. Montague, William J. Hawkins, M. G. Harman, Francis Skiddy, Charles W. Purcell, L. W. Glazebrook, John Echols, and Benjamin Hart and their associates, successors and assigns, be and they are hereby declared to be a body corporate and politic by the name of The National Express and Transportation Company, for the purpose of an express and transportation business, and as such shall have perpetual succession, and a common seal, which it may alter or renew at pleasure; and may sue and be sued, implead and be impleaded; contract and be contracted with; purchase, hold and grant such estates, real and personal, as may be necessary for the carrying on of the legitimate business of said company; and make ordinances, by-laws and regulations for the government of all under its authority, and the proper conduct of its affairs.

"2. The capital stock of said company shall be five millions of dollars, and shall be divided into shares of one hundred dollars each; but the said capital stock may from time to time, by order of the board of directors, be increased to a sum not exceeding ten millions of dollars.

"3. The said company may commence business as soon as one-third of its capital stock is subscribed, and one hundred thousand dollars of same is paid up; and on such subscriptions being made, any five of the stockholders may call a general meeting of the stockholders of the said company by advertising the time and place of such meeting, at least twenty days before the time of holding the same, in three of the daily newspapers of Richmond; Provided, however, that any other mode or time of calling such meeting shall be lawful if two thirds of the stockholders are represented thereat. At the meeting convened as aforesaid the said company shall elect, by a majority of the votes then present, or represented, not less than five nor more than nine persons, being stockholders of the said company, to act as directors, who shall represent the said company and manage the business thereof.

"4. The board of directors shall, at their first meeting after their election, elect one of their number as president of the said corporation; and may elect such other officers as they may deem

advisable. The president and directors of this corporation shall hold their offices for one year, and until their successors are chosen. Vacancies in the board of directors shall be filled in such manner as the by-laws of the corporation may prescribe.

"5. The annual election of directors and other officers of this corporation shall be held at such place and in such manner as its by-laws may prescribe.

"6. The said company shall have power to do an express and general transportation business, by land or by water, for the conveyance of persons and property of every kind throughout or beyond the limits of Virginia, in their own conveyances, or in those of such other persons or corporations as they may contract with; and to create and organize branch agencies for the same purpose; and to form any such arrangement, purchase or union with any other express or transportation company as may, in their opinion, be advantageous; and to build, hire, establish and maintain storehouses and other buildings for the safe-keeping of the property entrusted to their care for transportation; and shall have power to indemnify themselves by insurance against any loss or damage by fire, or the risks of navigation or transportation, on any property, held either in their own right or as bailees.

"7. The said company shall have power to sell all freights or baggage, if the same remain unclaimed more than one year, in its possession; but such sale shall be at public auction, and after notice for not less than four weeks in one or more newspapers published at or nearest the place of sale; and if such freights or baggage are of a perishable nature, it may be sold as soon as necessary. Said notice shall contain, as near as practicable, a description of such freight or baggage, the place and time of its deposit with the company, together with the name and residence of the owner or consignee of the same, if known. The proceeds of such sale shall be applied to the satisfaction of all charges upon the said unclaimed freight or baggage arising from its storage, transportation and sale. The residue, if any there be, shall be held in trust for the owner; and it shall be the duty of the said company to keep, at its principal office, a faithful record of all proceedings had under this power of sale; which record shall be open to the inspection of all claimants.

"8. The principal office shall be kept at Richmond, Virginia, unless the same be changed to some other place by a vote of two-thirds of the directors; and the said company may establish as many local offices as the president or board of directors may deem necessary.

"9. The right to the franchise granted by this act shall rest as soon as one-third of the capital stock is subscribed, and one hundred thousand dollars of the same shall be paid up. Of these facts it shall be the duty of the company to inform the governor, as the

officers of banks about to be put into operation are required to do.

"10. This act shall be in force from its passage, and shall be subject to modification or repeal, at the pleasure of the General Assembly."

Office of Keeper of Rolls of Va.

I hereby certify that the foregoing Act of Assembly is a true copy from the roll in my office, this 30th day of November, 1880.

P. H. McCAULL,

Clerk House of Delegates and Keeper of the Rolls of Virginia.

An Act

To amend the 8th section of an act entitled an act to amend and re-enact an act to incorporate the Southern Express Company, passed March 22, 1861, and to incorporate The National Express and Transportation Company, passed December 12, 1865.

Passed December 18, 1865.

1. Be it enacted by the General Assembly of Virginia, That the eighth section of the act passed December twelfth, eighteen hundred and sixty-five, entitled an act to amend and re-enact an act to incorporate the Southern Express Company, passed March twenty-second, eighteen hundred and sixty-one, and to incorporate The National Express and Transportation Company, be amended and re-enacted so as to read as follows:

§ 8. The principal office shall be kept at Richmond, in Virginia, unless the same be removed to some other place within this Commonwealth, by order of the stockholders in general meeting, and the said company may establish as many local offices as the President or Board of Directors may deem necessary.

2. This act shall be in force from its passage.

Office of Keeper of Rolls of Va.

I hereby certify that the foregoing Act of Assembly is a true copy from the rolls in my office, this 30th day of November, 1880.

P. H. McCAULL,
Clerk House of Delegates and Keeper of the Rolls of Virginia.

The following is the opinion of court referred to in the foregoing decree of December 14th, 1880:

OPINION OF COURT.

Glenn's Adm'r v. *The National Express and Trans. Co., &c.*

This suit was instituted in 1871, but nothing seems to have been done in it until the Spring term of this court of 1879, when leave was asked and obtained to file an amended and supplemental bill.

This inaction was caused, it is alleged, by reason of litigation pending in other States. But after the filing of the amended and supplemental bill in August, 1879, the cause has been actively prosecuted by the plaintiff. As soon as it matured for hearing it was referred to one of the master commissioners of the court to ascertain and report to the court an account of the debts and liabilities of the company, and also a statement of its assets.

Due notice of the enquiries ordered to be made by the master commissioner was given by publication in a newspaper then published in the city of Richmond.

The master commissioner, after examining the books of the company and other documentary evidence, and taking the depositions of numerous witnesses, has made his report, showing an aggregate indebtedness of the company on the 1st day of June, 1880, of $509,392.41.

There is no exception to this report. It appears to be correct in all respects in regard to the indebtedness of the company, and must therefore be approved and confirmed as to said indebtedness.

Regarding the indebtedness of the company as above indicated to be established, the question arises, how is it to be paid?

By a deed dated on the 20th day of September, 1866, the company conveyed all of its estate and property of every description to trustees to secure the payment of its debts. And the answer to the question just mentioned depends largely upon the validity, construction and enforcement of that deed.

I. The court is clearly of opinion that the said deed is valid.

This corporation was chartered by the Legislature of Virginia, and had its principal office in the city of Richmond, the capital of the State; and though by the 8th section of act of incoporation, power was given to two thirds of the directors to change the locality of the principal office without restriction as to State boundaries, yet by an amendment to the charter, passed December 18th, 1865, this was limited to removal to "some other place within this Commonwealth." And power was given to establish local offices anywhere.

This company, therefore, is a Virginia corporation, and as well by positive statute as by an inherent legal incident of its existence, it is domiciled in Virginia, though it may, and was, designed to

do business elsewhere as well. *Bank of Augusta* v. *Earle*, 13 Peters, 519; *Paul* v. *Virginia*, 8 Wall., 186.

The deed in question was executed, acknowledged, delivered and recorded in the city of Richmond, Virginia, as is shown by the certificate, in Richmond, of the notary public, Roger J. Page, bearing even date with the deed, and by the certificate of Robert Howard, clerk of the hustings court of Richmond, of the recordation of the deed on the day following. And as will be seen, it was executed by the president of the company by virtue and in pursuance of a resolution of the board of directors, in whom the whole management of the affairs of the company was vested, conferring upon him full authority and power for that purpose. It is therefore the deed of a Virginia corporation, under its corporate seal, and by proper authority duly made and delivered in Virginia, and its validity and effect should be determined by the laws of this state.

It purports to convey all of the property of the company in trust for the benefit of all its creditors, and this it was perfectly lawful and proper to do. It gives preferences to some creditors over others. But no law is better established in Virginia than that such preferences are legal. And this will be of no practical importance if the assets of the company be sufficient to pay its debts.

It retains for a limited time possession in the company of the property conveyed. But that this may be done is equally well established law in Virginia.

After repeated decisions of the supreme court of appeals of this state, establishing the validity of such deeds, the court entertains no doubt as to the legality and binding effect of this deed in all respects. The decision of the supreme court of Maryland, based upon some of these Virginia decisions, and the testimony of many of the prominent counsel of the bar of this court given as experts as to the law of Virginia in respect to this deed, and establishing the validity of the deed was, in the judgment of this court, plainly and clearly correct. See *Balto. & Ohio R. R. Co.* v. *Glenn*, 28 Maryland R., 287.

II. The validity of the deed being established, the next question is, what was its legal effect? What were the terms of the conveyance and what did it convey?

It is evident from the report of the commissioner and from the face of the deed that the company was greatly embarrassed financially, and that its general and leading object in executing the deed was to dedicate all of its assets and effects of every kind to the payment of its debts. Accordingly, to accomplish this purpose, it says, "the party of the first part doth hereby grant, bargain, sell, convey, assign and set over unto the said parties of the second part (the trustees) all the estate, property, rights and credits of the

said party of the first part of every kind, wheresoever situated, in or out of the state of Virginia."

It is difficult to conceive of larger and more comprehensive words of description of the property and rights and credits thus conveyed and assigned. But the deed does not stop there, it proceeds to make a general enumeration of the thing and rights conveyed and assigned, thus, "including leases, horses, wagons, carts, harness, office furniture, safe, chests, fixtures and other effects, and moneys payable to the company, whether on calls or assessments on the stock of the company, or on notes, bills, accounts or otherwise, which property and moneys are enumerated and set forth in a schedule to be marked A, and annexed hereto as soon as can be conveniently done, but the omission of any property from such schedule is not to prevent the same from being hereby granted or assigned."

Here is an express enumeration of "moneys payable to the company, whether on calls or assessments of stock of the company, or on notes, bills, accounts or otherwise," and though no schedule was ever made or annexed to the deed, yet the distinct reference to such a schedule as is described, with the statement that the "omission of any property, money or other thing from such schedule is not to prevent the same from being hereby granted or assigned, is ample proof that it was the object, intent and meaning of the company to convey all of its estate, rights and credits of every kind in trust for the payment of its debts. And in the deed it made and executed, it used language which has been held by the courts to be apt and sufficient to pass everything the company owned, or to which it was entitled, inclusive of the estate, property, rights and credits of the company of every kind, and wherever situated. See *Maitland* v. *Newton*, 3 Leigh, 714; citing *Comegy's* v. *Vasse*, 1 Peters, 193; *Mundy* v. *Vawter*, 3 Grat., 518; *Griffin* v. *Macauley*, 7 Grat., 477; *Wickham* v *Lewis, Martin & Co.*, 13 Grat., 427, 437, 438; *Milner* v. *Metz*, 16 Peters, 221.

And the same principle seems to have prevailed in the bankrupt court, where the regtster assigns and conveys all the estate, real and personal, of the bankrupt. The decisions in such cases appear to be uniform that the right to receive unpaid subscriptions to the capital stock of a bankrupt corporation passes, by the act of Congress and the register's deed, to the assignee in bankruptcy. Indeed no question seems to have been made upon the subject, and the cases seem to have proceeded upon the assumption that such right was vested in the assignee. See *Sanger* v. *Upton*, assignee, 91 U. S. R., 56 *Upton, assignee*, v. *Tribilcock*, idem, p. 45; *Turnbull* v. *Payson*, 95 U. S. R. 418; *Pullman* v. *Upton*, 96 U. S. R., 328.

By chapter 57, section 3, p. 546 of the Code of Virginia of 1873 (which is a reprint, in this respect, of the like chapter in the Code of 1860) it is provided that "upon every subscription for

shares in any joint stock company (other than a bank of circulation) there shall be paid upon each share two dollars at the time of subscribing and the residue thereof as required by the president and directors. A subscription to such stock obviously creates a debt or obligation, of which two dollars a share are payable *in presenti* and the residue *in futuro*. This residue is an express credit extended by the company to the stockholders, and the company has a plain legal statutory right to demand payment whenever it may be needed, or, as the statute declares, "as (when) required by the president and directors." And it is further provided by the statute —see chapter 57, section 23, p. 550, Code of 1873—(same chapter, section 21, p. 334, Code of 1860) that if any money which any stockholder has to pay upon his shares be not paid as required by the president and directors, the same, with interest thereon, may be recovered by warrant or action, according to the amount, or by motion in lieu of an action. So that the statute not only recognizes such a subscription as a debt to the company—an express credit intended by the company to the stockholders—but it provides the remedy for its recovery by legal proceedings. And, independently of the statute, it seems that on general principles such subscriptions are recognized by the courts as debts due to the company, which the company has the right to recover of the stockholders, and which are to be regarded as a fund which the corporation holds for the payment of its debts. See *Marsh, &c.* v. *Burroughs*, Wood's Cir. Ct. R., pp. 468, 479; *Hatch* v. *Dana*, 101 U. S. R., pp. 210, 211.

The court is clearly of the opinion that the broad and comprehensive terms of the deed embraced the unpaid subscriptions of stock, and that it conveyed and transferred to the trustees for the purposes of the trust the right to receive, when called for, all such unpaid subscriptions, and that the deed carried all the credits belonging to the company in that respect. And the court is further of opinion that, inasmuch as the president and directors have failed and omitted to make those rights and credits of the company available to its creditors by making a call and assessment upon the stockholders, it is the duty of the court, under the law, to effectuate those rights and collect and appropriate those credits in such manner and by such means as may be necessary and proper for the execution of the trusts of the said deed.

III. Having decided that the deed is valid, and that it embraced all the property, rights and credits of the company, it remains to be considered how the rights of the creditors are to be enforced.

It seems, from the proceedings in this case, that the great bulk of the property, effects and claims of the company consists of unpaid subscriptions to its capital stock; and the creditors must look entirely to this fund for the payment of their debts.

As to 80 per cent. of the stock, the subscription is wholly un-

paid. And the president and board of directors have made no call or assessment on the stockholders, and no order whatever in regard to the collection of any part of this unpaid subscription. And for many years they seem to have entirely abandoned the business of the company. It is charged that neither the directors nor the stockholders of the company have had a meeting for nearly fourteen years. But, although the company has ceased to do business, and the president and directors no longer give attention to its affairs, the corporation has not become extinct. Under the statue of Virginia, chapter 56, section 31, p. 543, of the Code of 1873, "such corporations may sue and be sued, as before, for the purpose of collecting debts due to it, prosecuting rights under previous contracts with it, and enforcing its liabilities, and distributing the proceeds of its works, property and debts among those entitled thereto." And by sect. 4 of the charter of this company (Acts 1865–'6, p. 380), it is expressly provided that the president and directors of this corporation shall hold their offices for one year, and until their successors are chosen. And see, also, to same effect, chapter 57, section 14, Code of 1873, p. 549, where the president and directors of the company and the stockholders of the company are in default in making provision for the payment of its debts, it is made the duty of the court to enforce payment of the stock subscriptions to an extent sufficient, with any other assets that may be in the hands of the trustees, to pay the debts of the company, the costs of suit and the expenses incident to the execution of the trusts. For it seems to be well settled that a court of equity may enforce payment of stock subscriptions, though there may have been no calls for them by the company. *Hatch* v. *Dana*, 101 U. S. R. (11 Otto), 214, 215; *Thompson* v. *Stockholders*, sects. 15 and 345.

It is to be regretted that the parties themselves have not attended to this duty. They could have acted with a knowledge of all the facts, and were in a better position and circumstances to know what was requisite and proper, than a court can be. It is very clear that a call and assessment must be made on the stockholders, but it is difficult to determine what it should be.

With the lights now before the court, it is deemed most advisable under all the circumstances to accept the recommendations of the commissioner in his supplemental report of December 8, 1880, which is as follows: "In my former report, filed June 19th, 1880, a statement was rendered showing that an assessment of 20 per cent. on the par value of unpaid stock, being 80 per cent. of the par value of the original stock, was considered enough to satisfy the debts due by the defendant company. This statement should be changed, I think, in two particulars. First. The assessment, whatever it be, should be laid on the par of the stock, and not on that amount, less assessments heretofore made. In other words, the par or face value of the company's stock should furnish the

basis of the assessment. Secondly. On reflection, I am satisfied that the 20 per cent. assessment suggested, if not recommended, in my former report, is too small; and that the same should be increased to 30 per cent., if such increase is within the discretionary powers of the court.

The reasons seem sufficiently obvious. The stockholders by whom the enormous debt of the defendant company is due are very numerous, as shown by evidence in the cause, they are widely dispersed; many are doubtless insolvent, many dead, and consequently the preceedings necessary to enforce any assessment laid by the court must be exceptionally expensive. The assessment should provide for those costs, &c. Moreover, as many of the debtors are insolvent, any assessment aggregating the exact amount of the defendant's liabilities would manifestly fail to satisfy them, and thus a second and perhaps a third might become necessary, each attended with its heavy costs and expenses. It would seem better, therefore, in the interest of debtor as well as creditor, that an assessment should be laid at the start, on which enough may be realized to satisfy the debts of the company. And this is accordingly recommended. Should more than enough be collected on a 30 per cent. assessment, it will be more easy as well as less expensive to *return* the overplus to the stockholders than it would be (in the event of a deficiency) to collect a second one."

IV. By the answer of John Blair Hoge, and the amended and supplemental answer of John J. Kelley, surviving trustees in the said deed of trust, it appears that they are so situated personally as to be unable to execute the trusts, and they desire to be relieved from the office of trustee. It would be a source of satisfaction to the court if they would continue to act, but inasmuch as they decline to do so, they should by proper order be removed from their said office.

It is represented to the court by the counsel for the creditors whose debts have been established, that John Glenn, Esquire, of Baltimore, Maryland, is a fit and proper person to be substituted and appointed as trustee to execute the trusts of said deed, and a proper order appointing him as substituted trustee will be entered. But before he undertakes to act in the execution of the trust he will be required to give bond with good security before the clerk of this court, in the penalty of $100,000, conditioned for the faithful discharge of his duties as such substituted trustee.

He will be required from time to time to report his proceedings to the court in the execution of the trust, so that the whole trust shall be executed under the supervision of the court. He will deposit his collections, after paying the necessary costs and expenses incident to the administration of the trust, in the Planters National Bank of Richmond, to the credit of the court in this cause, or in

such other bank as may from time to time be designated by the court.

And the said substituted trustee shall from time to time—not omitting any period of six months—render an account of his transactions before one of the master commissioners of this court. And such commissioner will be directed, upon such settlement being made, to report the same to the court. And upon the coming in of such report, as soon as sufficient sums shall be collected, the court will take order as to the proper distribution of the fund among those entitled thereto.

And at another day, to-wit:

At a chancery court of the city of Richmond, continued by adjournment and held for said city on the 3rd day of January, 1881.

John W. Wright, sheriff of the city of Richmond, and as such administrator of W. W. Glenn, deceased, who sues on behalf of himself and other creditors of the National Express and Transportation Company, Pl't'ffs.

against

The National Express and Transportation Company, W. H. Perot, Wm. Devries, D. J. Foley, J. R. Anderson, F. P. Zimmerman, J. Carter Marbury, Wm. H. Webb, Lorenzo Norvell, M. B. Poitiaux, and John Blair Hoge and John J. Kelly, trustees, Def'ts.

This day came John Glenn, by John Howard, his counsel, and represented to the court that he had duly executed the bond before the clerk of this court, required of him as substituted trustee in the deed of trust in the proceedings mentioned by the decree entered herein on the 14th day of December, 1880; and exhibited to the court the said bond, bearing date the 31st day of December, 1880, with John M. Glenn, John C. Backus, Henrietta R. Glenn, Edward G. Kenly as sureties thereon, executing the same by said John Howard, their attorney in fact, and the powers of attorney from the said sureties authorizing the execution of the said bond, in their stead by their said attorney in fact, accompanied with affidavits of the several sureties, of the sufficiency of such security and the recommendation in writing of Charles Marshall and John Howard, attorneys and counsel for the creditors of the defendant company, whose claims were established by the said decree of the 14th December, 1880, that the said sureties be accepted; and the court being satisfied of the due execution of the said bond in all respects, and of the sufficiency of the said sureties, doth hereby approve the said bond and the action of the clerk of this court in taking and accepting the same.

And at another day, to-wit:

At a chancery court for the city of Richmond, continued by adjournment and held for said city, on the 11th day of January, 1881.

John W. Wright, sheriff and adm'r, &c., P't'ff,
against
The National Express and Transportation Co. & als., Def'ts.

On motion of the plaintiff it is ordered that Master Commissioner O. G. Kean do, with all convenient speed, have certified copies made under his inspection of the stock-book and ledger stock-book of the said National Express and Transportation Company, referred to in the report of the said commissioner of the 19th day of June, 1880, and deliver the same, together with the said books and all other books of the said company that may be in the office of the said commissioner, to John Glenn, substituted trustee in the deed of trust in the proceedings mentioned, or to his counsel.

And at another day, to-wit:

At a chancery court for the city of Richmond, continued by adjournment and held for said city on the 30th day of April, 1881.

John W. Wright, sheriff and adm'r, &c., Pl't'ff,
against
The National Express & Transportation Co. & als., Def'ts.

Upon consideration of the report of Commissioner O. G. Kean, filed on the 5th day of March, 1881, it is ordered that the sum of forty dollars be, and the same is hereby allowed the said commissioner, as his fee for the services rendered by him as indicated in said report, and that the sum of one hundred dollars be, and the same is hereby allowed the said Wm. G. Allen for his services as copiest, rendered by him as indicated in said report; the said several sums to be paid by the plaintiff, John W. Wright, administrator of W. W. Glenn, deceased, out of any funds in his hands to be administered, or by John Glenn, substituted trustee in the deed of trust in the proceedings mentioned, out of any trust funds in his hands to be administered. Said several sums to be in full satisfaction for the said services respectively rendered as aforesaid, and to be subject to proper credits for any part thereof, if any, heretofore received by either the said commissioner or the said Allen.

And at another day, to-wit:

At a chancery court for the city of Richmond, continued by adjournment and held for the said city, the 13th day of October, 1881.

John W. Wright, sheriff and adm'r, &c., Pl't'ff,
against
The National Express & Transportation Co. & als., Def'ts.

This day came James J. Trotter, by counsel, and tendered his petition in this cause, and asks leave to file the same, and court, without refusing or granting leave to file said petition, takes time to consider said request.

And at another day, to-wit:

At a Chancery court for the city of Richmond, continued by adjournment and held for the said city, the 2d day January, 1882:

John W. Wright, sh'ff and adm'r, &c., Pl't'ff,
against
The National Express and Transportation Co. and als., Def'ts.

In the matter of the petition of J. J. A. Trotter.

It appearing to the court that notice of the motion made in this matter on the 15th December, 1881, has been duly served on Wise & Hobson and W. W. Gordon, the attornies for said Trotter, it is ordered that said motion be docketed and continued until to-morrow morning at ten o'clock.

And at another day, to-wit:

At a Chancery court for the city of Richmond, continued by adjournment and held for the said city, the 14th day of May, 1883:

John W. Wright, sh'ff and adm'r, &c., Pl't'ff.
against
The National Express & Transportation Co., and als., Def'ts.

This cause came on this day to be heard on the papers formerly read, and the petition of J. J. A. Trotter, and the petition of John E. Hurst and others, which said petitions are hereby ordered to be filed in this cause. And the court doth adjudge, order, and decree that John Glenn, who was appointed substituted trustee in the place of Kelly and Hoge, is hereby directed to take no further steps towards the collection of the thirty per cent. assessment against the stockholders of the defendant company until the 9th day of June, 1883, and that he shall suspend the prosecution of

any suits which he may have heretofore instituted under and by virtue of the decree of December 14th, 1880, in this cause, until the said 9th day of June, 1883. And leave is given the complainant, or any other party interested, to answer the said petitions or either of them.

And at another day, to-wit:

At a Chancery court for the city of Richmond, continued by adjournment and held for the said city, the 9th of June, 1883:

John W. Wright, sh'ff and adm'r, &c., Pl't'ff.
against
The National Express & Transportion Co., and als., Def'ts.

This cause came on again to be heard, formerly read, and was argued by counsel. On consideration whereof the court doth adjudge, order, and decree that the restraining order of May 14th, 1883, be continued until the 21st day of June, 1883.

And at another day, to-wit:

At a Chancery Court for the city of Richmond, continued by adjournment and held for the said city, the 19th of June, 1883.

John W. Wright, sh'ff and adm'r, &c., Pl't'ff.
against
The National Express & Transportation Co. & als, Deft's.

This day the Baltmore and Ohio Railroad Company, the Bank of Commerce, (of Baltimore), John W. Wright, sheriff of the city of Richmond, and as such administrator of W. W. Glenn, deceased, Francis Murray, for the use of John R. Terry, Henry M. Bash, trustee for John O. Reid, Henry R. Robins and Nicholas E. Watkins, Luke H. Miller, the Philadelphia, Wilmington and Baltimore Railroad Company, the Seaboard and Roanoke Railroad Company, the Richmond and Danville Railroad Company, the Orange and Alexandria Railroad Company, the Wilmington and Weldon Railroad Company, J. T. M. Barnes, and Richard J. Allison, by leave of the court, filed their joint and several answer to the petition of John E. Hurst and others filed herein on the 14th day of May, 1883. And the said respondents, by like leave of the court also filed their joint and several answer to the petition of J. J. A. Trotter, also filed herein on the said 14th day of May, 1884.

And at another day, to-wit:

At a Chancery Court for the city of Richmond, continued by adjournment and held for the said city, the 30th of June, 1884.

John W. Wright, sh'ff & adm'r &c., Pl't'ff.
against
The National Express & Transportation Co. & als., Def'ts.

This day by leave of the court the Baltimore and Ohio Railroad Company, the Bank of Commerce of Baltimore, John W. Wright, sheriff, and ss such administrator of W. W. Glenn, deceased, in behalf of themselves and all other creditors of the said company, whose claims are established by the said decree of December 14th, 1880, filed their joint and several answer to the petition of Thomas L. Farish and others filed in this cause, to which answer, said petitioners replied generally.

And at another day, to-wit:

At a Court of Chancery for the city of Richmond, continued by adjournment and held for the said city, the 21st July, 1883.

John W. Wright, sh'ff & adm'r &c., Pl't'ff.
against
The National Express & Transportation Co., & als., Def'ts.

This cause came on this day to be heard again on the papers formerly read, the petition filed, the answers thereto, the replications to said answers, the exhibits filed, the depositions of witnesses, and was argued by counsel, on consideration whereof the court, without at present suspending the operation of the decree of December 14th, 1880, but expressly reserving for future consideration the question whether the stockholders are liable to any extent on their unpaid subscriptions for stock taken by them, and the question whether the decree of December 14th, 1880, should be set aside and the bill dismissed, and without at this time deciding or considering any question in the cause raised by the petitions or answers thereto, but reserving all such questions for future consideration and determination by the court, doth by consent of parties to this cause, as expressed by the endorsement of their counsel hereon, adjudge, order and decree that John Glenn, trustee, on the payment to him, within six months from the date of this decree, by any of the subscribers to the stock of the defendrnt company, or by any other person claimed to be liable on account of said stock, of twenty-five per centum of the original amount of said subscription, with interest thereon at the rate of six per centum per annum, from thirty days from the date of this decree, with any costs incurred heretofore or by said trustee in any suit brought by

him heretofore, or which may hereafter be brought before tender of said twenty-five per cent. under this decree to recover of such stockholder or other party, the amount for which he may be responsible on said stock under the decree in this cause, shall execute a receipt therefor to operate as a full acquittance and discharge of all persons on account of such subscription, both of the original subscribers thereto, and of any assignee thereof.

And at another day to-wit:

At a Court of Chancery for the city of Richmond, continued by adjournment and held for the said city, the 13th day of December, 1883.

John W. Wright, sh'ff & adm'r, &c. Pl't'ff.
against
The National Express & Transportation Co. & als., Def't's.

In order that all persons interested may have the opportunity to avail themselves of the compromise provided by the decree herein of July 21, 1883, if they elect so to do, it is ordered that John Glenn, trustee, do forthwith mail a copy of the said decree to every person against whom any liability is asserted in this suit; and the court further orders the said John Glenn, trustee, in every case where suit may hereafter be instituted before January 21, 1884, against any person, to serve a copy of said decree of July 21, 1883 upon such person before the institution of such suit, except in cases of attachment; and in cases of attachment the said copy shall be served as soon thereafter as practicable. And said trustee is directed to report to this court how he has executed this order.

And at another day, to-wit:

At a Court of Chancery for the city of Richmond, continued by adjournment and held for the said city, the 18th of December, 1883.

John W. Wright, sh'ff & adm'r &c., Pl't'ff.
against
The National Express & Transportation Co. & als., Def'ts.

This cause came on this day to be heard again, on the papers formerly read, the report of John Glenn, trustee, this day filed in respect to claim against the estate of Michael C. Garber, the affidavit mentioned in said petition, and was argued by counsel. On consideration whereof, the court being satisfied from said petition and exhibits that the compromise suggested by the said trustee is

judicious, and is consented to by the creditors of said company, as evidenced by the endorsement of their counsel on this decree, doth adjudge, order and decree that said trustee, John Glenn, be and he is hereby authorized to accept the sum of twelve hundred and fifty dollars in full of the liability of the estate of Michael C. Garber, on account of the one hundred shares of stock in said petition mentioned, and to grant an acquittance and discharge of such liability, but such discharge is not to operate as an acquittance of Henry J. Rodgers, transferree of said stock, from liability in respect thereto.

And at another day, to-wit:

At a Chancery Court for the City of Richmond, continued by adjournment and held for the said city, of the 24th day of January, 1884.

John W. Wright, sh'ff and adm'r, &c., Plt'ff.
against
The National Express and Transportation Co. and als., Def'ts.

This day came George A. Smith and, by leave of court, filed his petition is this cause; whereupon, this cause coming on to be heard on the papers formerly read, and on the said petition of George A. Smith, and being argued by counsel, the court doth adjudge, order and decree, that this cause be referred to W. J. Leake, one of the commissioners of this court, to take proof of said George A. Smith, and said commissioner shall report the amount thereof, principal and interest, and whether the same is a preferred claim under the deed of trust referred to—these proceedings bearing date on the 20th day of September, 1866, together with any matter, specially stated, deemed pertinent by himself, or required by any party interested, to be so stated.

And at another day, to-wit:

At a Chancery Court for the City of Richmond, continued by adjournment and held for the said city, the 9th of February, 1884.

John W. Wright, sh'ff and adm'r, &c., Plt'ff.
against
The National Express and Transportation Co. and als., Def'ts.

This day came Junius L. Brodie, and by leave of court, filed his petition in this cause; whereupon, this cause came on to be further heard, upon the papers formerly read, and, on the said petition of Junius L. Brodie, with the exhibit filed therewith, and was

argued by counsel. On consideration whereof, the court doth adjudge, order and decree that the decree entered in this cause on the 24th day of January, 1884, be amended and enlarged so as to require commissioner W. J. Leake, to enquire into the claim of the said petitioner, J. L. Brodie, and to report the character and amount of same, principal and interest, if found by him to be due and unsatisfied, and for them to enquire whether the same is a preferred claim under the deed of trust referred to in the proceedings in this cause, bearing date on the 20th day of September, 1866, and make report thereof to the court, with any matter specially stated, deemed pertinent by himself, or required by any party interested, to be so stated.

And at another day, to wit:

At a chancery court for the city of Richmond, continued by adjournment and held for the said city, March 8th, 1884.

John W. Wright, sh'ff and adm'r, &c., Plt'ff.
against
The National Express and Transportation Co. and als., Def'ts.

The death of John W. Wright, late sheriff of the city of Richmond, and as such, administrator in Virginia, of the estate of W. W. Glenn, deceased, is suggested, and, on motion of John Glenn, administrator of the said estate in Maryland, the same is committed to John Howard, Esq'r, who gave bond and qualified according to law as administrator de bonis non of said W. W. Glenn, dec'd. And thereupon, on motion of said Howard, this suit is revived as to the said estate in the name of said John Howard, as administrator de bonis non of said estate of W. W. Glenn. And thereupon this cause came on again to be heard, on the papers formerly read, the report of the trustee, John Gleen, dated the 18th January, 1884, in reference to the liability of Thomas Opie, as a stockholder of the defendant company, the exhibits filed therewith, from an offer of compromise made by said Opie; the report of said trustee dated January 17th, 1884, in reference to the liability of Hugh W. Sheffey as a stockholder of the defendant company, the exhibit filed therewith being and offer of compromise made by said Sheffey, to which reports there are no exceptions, and was argued by counsel. On consideration whereof, and it appearing that by reason of the inability of the said two stockholders, collections of amounts greater than they offer to pay could not be enforced. And it further appearing from said reports of the trustee that it will be to the advantage of the fund, and of the other stockholders, to accept said offer on the grounds and for the reasons set forth in said reports, it is adjudged, ordered, and decreed that John Gleen,

trustee, is hereby authorized on prompt payment by the said Thomas Opie, of the sum of five hundred dollars to grant to said Thomas Opie, an acquittance and discharge of his liability as a subscriber to sixty shares of the stock of the defendant company. And the court doth for like reasons further adjudge, order and decree that the said trustee, on prompt payment of the sum of one thousand dollars by Hugh W. Sheffey, is authorized to grant unto the said Hugh W. Sheffey and acquittance and discharge of his liability as a subscriber to one hundred and fifty shares of the stock of the defendant company. And the court doth further adjudge, order and decree that William J. Leake, Esq., one of the commissioners of this court, do proceed with all convenient speed to ascertain and report to the court, the order of priority in which the debts due by said National Express and Transportatiou Company shall be paid out of any property and assetts conveyed by the said deed of trust of the 20th day of September, 1866. And the said commissioner is directed to report specially any matter deemed pertinent by himself, or which any party in interest may require to be specially stated by him.

And at another day, to-wit:

At a Chancery court for the city of Richmond, continued by adjournment and held for the said city, the 11th April, 1884.

John Howard, adm'r, &c., Pl't'ff.
against
The National Express & Transportation Co. & als., Def'ts.

This day came Thomas J. Jennings, Goode Bryan, and Charles B. Purcell, by counsel, and moved the court for leave to file their petition herein, to the granting of such leave the complainants, by counsel, objected. On consideration whereof, the court doth allow the said petition to be filed, and remands the same to the rules to be matured.

And at another day, to-wit:

At rules held in the clerk's office of the said court on the 1st Monday in May, 1884.

This day came John Howard, counsel for the defendants in the last above-named petition and in his own proper person as plaintiff in this suit, and waived process, and service thereof, on said petition, and failing to answer said petition, it is ordered that unless the said defendants should appear at the next rules and plead an-

swer or demur to said petition, the same would be taken for confessed as to them and the matters thereof, decreed accordingly.

At a chancery court for the city of Richmond, continued by adjournment and held for the said city, on the same day, to-wit: on the 27th of June, 1884.

On the said last named 27th day of June, 1884:

John Howard, adm'r, &c., Pl't'ff.
against
The National Express & Transportation Co. and als., Def'ts.

On motion of the plaintiff it is ordered that this cause be removed to the Circuit Court of Henrico county to be proceeded in, heard, and determined by that court according to law.

The foregoing is a true copy of all the rules and proceedings in the foregoing cause.

Teste:

BENJ. H. BERRY, Clerk.

Clerk's fees, $108.06.

Teste:

BENJ. H. BERRY, Clerk.

In the Circuit Court of the county of Henrico, continued by adjournment and held for said county, the 1st day of July, 1884:

W. W. Glenn's adm'r
vs.
The National Express and Transportation Company and others.

It appearing from an order of the Chancery Court of the city of Richmond of the 27th day of June, 1884, that this cause has been removed from the said Chancery Court to this court, the same is hereby ordered to be placed upon the docket of this court, to be hereafter proceeded in, heard and determined in this court according to law.

In the Circuit Court of the county of Henrico, continued by adjournment and held for the said county, the 10th day of July, 1884:

Glenn's adm'r
vs.
Nat'l Ex. and Trans. Co. &c.

On motion of the plaintiff, the death of the petitioner, J. J. A Trotter, is suggested.

And at another day, to-wit:

At a Circuit Court of the county of Henrico, continued by adjournment and held for the said county, Dec. 4, 1884.

Glenn's adm'or and others
vs.
National Express and Transportation Company and others.

In accordance with directions to the clerk of this court, by Green Peyton, this day filed, bearing date the 2d day of December, 1884, the petition heretofore filed by him in this cause, for a rehearing of various decrees, and any other proceedings taken in his name in the cause for the same purpose are hereby dismissed.

At a Circuit Court of the county of Henrico, continued by adjournment and held for said county December 9th, 1884.

Glenn's adm'r and others, Pl't's.
against
National Express and Transportation Company and others, Def'ts.

It appearing to the court that this suit has abated as to the estate of the petitioner, J. A. J. Trotter, and it being represented to the court that said estate is insolvent, and that John E. Hurst and others, and Thomas L. Farish and others, stockholders, who filed petitions herein for a rehearing of the decree of December 14th, 1880, and upon which the order of 21st July, 1883, was entered, have accepted the terms thereof, the petition of the said Trotter and the said petitions of the several other stockholders aforesaid are hereby dismissed, and John Glenn, trustee of the defendant company, is directed to proceed to execute the said decree of December 14th, 1880, (entered by the Chancery Court of the city of Richmond, from which court this cause has been removed and transferred to this court according to law), as if the said order of July 21st, 1883, had never been entered.

At a Circuit Court of the county of Henrico continued by adjournment and held for said county February 21st, 1885.

Glenn's adm'r
vs.
National Ex. & Trans. Co. & als. } In chancery.

On the application of the plaintiffs, it is ordered that Wm. J. Leake, who is acting as a special commissioner of this court in this cause, be, and he is hereby directed, to make a complete copy

from the record book of the Board of Directors of the defendant company, heretofore produced and proven by John J. Kelly, of the proceedings of the said board had on November 1st, 1866, and certify the same, and file it with the clerk of this court as speedily as possible.

Report of Commissioner Leake under the foregoing order, filed Feb. 25, 1885.

Called Meeting.

Richmond, Nov. 1st, 1866.

Present: M. G. Harman, vice-president; H. G. Fant, Wm. Devries, C. R. Mason, D. J. Foley.

The resignation of Mr. Echols was offered and accepted.

Mr. Jos. R. Anderson, of Richmond, was unanimously elected a director, vice Echols resigned, and took his seat.

The resignation of Mr. H. G. Fant was offered and accepted.

The resignation of Gen. Jos. E. Johnston, as director and president, was read, and unanimously accepted.

Mr. R. P. Zimmerman, of Atlanta, Ga., was unanimously chosen director, vice Fant resigned, and took his seat.

The resignation of Mr. C. R. Mason was offered and accepted.

Also that of Mr. Austin Dall.

The following named gentlemen were unanimously elected directors, viz.: J. Carter Marbury, vice Mason resigned; Lorenzo Norvelle, vice Johnston resigned; Wm. H. Perot, vice Dall resigned.

The resignation of Wm. J. Hawkins was offered and accepted, and W. H. Webb, elected.*

By Mr. Marbury—Whereas it is the desire of this company to meet all of its obligations at the earliest possible moment by carry-

*Note by Commissioner.—The words "the resignation of Wm. J. Hawkins was offered and accepted, and W. H. Webb, elected," are in pencil in the original, and are copied herein in pencil, in like manner.

W. J. LEAKE, Com'r.

ing out the provisions of the deed of trust made by this company on the 20th day of September, 1866, by forcing by all legal means the delinquent stockholders to pay up their arrearages.

Be it resolved, That the gen'l sup't, Jno. J. Kelly, Esq., be directed to immediately suspend all the business operations of the National Ex. & Trans. Co. at all points, dismissing all the employees of the company, excepting the treasurer, and a sufficient number of teamsters to take care of the horses.

Resolved, That the vice-president be directed to turn over all the property of the company to the trustees appointed under the above recited deed of trust, with the request to them that they will advertize to receive proposals on the tenth (10th) day of December next for the purchase of the same in mass, and failing to get a satisfactory bid for the same, to sell the same on the appointed day to the highest bidder. And that a list of all the property shall be open for the inspection of bidders at all the principal offices of the company.

Provided, that if the said company shall, on or before said day, pay off the obligations in said deed secured and set forth, the said property shall be re-delivered by the said trustees to the said company or its agents.

Resolved, That the president, or, in his absence, the vice-president, be directed to place all the claims against delinquent stockholders in the hands of competent persons for collections, with directions to pursue the utmost limit in enforcing the payment of the same, allowing not over five (5) per cent. for collecting the same. When paid, all such sums shall be paid over to the trustees for distribution amongst the creditors according to the terms of the trust, the board deeming it just that all delinquent subscribers shall be required to pay up before new requisitions be made.

Adopted unanimously.

By Mr. Anderson—Resolved, That the president, or, in his absence, the vice-president, be instructed to apply to the General Assembly of Virginia, if practicable, on the first day of the ensuing session, to make such amendments of the charter as were indicated by the stockholders at their recent meeting, and in addition thereto, an amendment authorizing the company to buy in the stock of delinquent stockholders, if, upon legal advice, there be no objection thereto.

Adopted unanimously.

By Mr. Harman—Resolved, That the vice-president be directed to bring a suit for damages for ——— dollars against the Adams Express Co., or individuals of the same, provided eminent counsel

can be found to bring the suit upon a contingent fee of 50 per cent. with a certain fee of $500.

Adopted by following vote:

Ayes.	Noes.
Zimmerman,	Devries.
Marbury,	
Foley,	
Anderson,	
Harman.	

Wm. H. Perot was next elected by a unanimous vote president of the company, at a salary of twenty-five hundred dollars ($2,500) per annum. And Mess. Devries and Foley were appointed a committee to wait upon Mr. Perot, inform him of his election as president, and request his acceptance of said position. On motion, Mr. Harman was substituted vice Devries, as one of the Executive Committee of the company.

On motion, the meeting adjourned *sine die*.

J. V. H. ALLEN,
Secretary.

M. G. HARMAN,
Vice-President.

Com'r's Office,
Richmond, Va., Feb'y 21st, 1885.

Glenn's adm'r
vs.
National Express & Tranportation Company & als., } In chancery.

To the Circuit Court of Henrico:

Pursuant to the order made in this cause on this day, the undersigned has caused to be made the foregoing copy of the proceedings of the Board of Directors of the National Express & Transportation Company, at a meeting held on November 1st, 1866, as appears on the record book of said Board of Directors, being the same book produced by John J. Kelly, with his deposition taken before Com'r Kean on April 26th, 1880, and therein styled "Record N. E. & T. Co. Board of Directors," and I hereby certify that the foregoing is a true copy.

Given under my hand this 21st, 1885.

WM. J. LEAKE,
Com'r in Chancery.

Petition of Thomas J. Jennings and others, in the chancery court of the city of Richmond, April, 1884, referred to on p. 208, *supra*, of this record, and filed April 11, 1884.

In the Chancery Court of the city of Richmond:

W. W. Glenn's adm'r et al.
vs.
The National Express & Transportation Co. et al.

Petition of Thomas J. Jennings et al., filed 11th April, 1884.

By leave of the court—

Your petitioners, Thomas J. Jennings, Edward B. Purcell and Goode Bryan, of the county of Richmond, State of Georgia, respectfully represent that they are holders of certificates of the capital stock of the said National Express and Transportation Company, and as such holders interested in the proceedings in said cause had and to be had.

Petitioners were not served with any process in said cause, were not made parties defendant, and, living in a distant State, had no notice whatever of any kind of the pendency of said proceedings until in October, 1883, and then had the scant notice of a demand for an assessment decreed against them, without notice or day in court, which put them on inquiry; and now, at the first term of said court, after their ascertainment of the facts connected with the rendition of the partial or interlocutory decree in said cause, made on the ————————, by your honorable court, petitioners come by their counsel and petition to have the said cause reheard and the manifest injustice of said decree corrected, as well for petitioners as for all others like interested with them who may join petitioners under the proper orders of the court here to be granted; and for grounds entitling petitioners to have said decree opened and a rehearing had, petitioners aver that the record of said cause discloses the following, to-wit:

1. There was no appearance for any of the defendants in said cause against whom substantial relief was prayed.

2. There was no relief decreed against any defendant in said cause who did appear.

3. By the said decree a large number of judgments, aggregating in amount many thousands of dollars, to-wit: two hundred thousand dollars, or some such sum, were granted to various parties or persons who had never by proper proceedings become parties complainant in said cause before said judgments were granted in their favor against the said National Express and Transportation Company.

4. By said decree the report of the commissioner of said court was confirmed, in which report was incorporated a finding of an immense sum of money against said National Express and Transportation Company in favor of persons not complainants in said proceedings, and of whose claims no notice whatever of any kind was given to said National Express and Transportation Company before the time that they (said claims) were passed on by said commissioner, and adjudicated against said defendant company (and as a consequence against petitioners, if they shall be held to be stockholders in said defendant company) by the said decree, said sum being all of said amount decreed as the indebtedness of said defendant company, except the claim known as the Glenn debt, on which said suit was originally brought.

5. Petitioners are advised that the service of said complainants' writ was illegal on the parties defendant purporting to have been served; being advised that it appears of record in your honorable court that the officer perfecting such pretended service on the pretended officers or agents of said defendant company was at the time of such service the deputy of the administrator of the said W. W. Glenn; and being further advised, that under the laws of Virginia the title to personalty of estates vests in the administrator, and that it appears of record in this cause that said suit was regarding personalty.

6. Petitioners are advised that it appears from the record in said cause that the service on said defendant corporation was not in accordance with the statute in such cases made and provided.

7. Petitioners are advised that said decree is based upon a bill in equity lacking in substantial parties defendant; that it appears from the record that the substantial relief prayed was against the stockholders of the capital of said defendant company; that said bill averred there were no assets of said defendant company save the said capital stock; that said bill averred that there were stockholders in the State of Virginia, but that it appears from the record of said cause that no one of said stockholders was made party defendant as such; that no stockholder appeared and defended, and that the class against whom the only real relief was decreed was not sued nor served, nor by any representative appeared and defended.

8. Petitioners are advised that it appears from the record of said cause that said decree by default was granted without proof made to the court that the precedent conditions of the charter authorizing the said defendant company to sue and to be sued, to do business and contract debts, were ever complied with.

9. Petitioners are advised that it appears from the record in said cause that the original contract of subscriptions of stock were never placed in evidence before the court granting said decree, which said decree was based upon a report as to the said stock subscribers, and the said adjudicated indebtedness.

10. Petitioners are advised that said decree by default was granted in the absence of proof to the court granting the same; that the pretended officers, or agents, directors, cashier and president of said defendant company, by service (of the character aforesaid), on whom the complainants seek to bind said defendant company, were ever lawfully elected or appointed to their said offices, or ever acted as such in and about the affairs of said defendant company; petitioners being further advised that the question as to the legal existence of said corporation, its officers and agents, and who they were and how appointed or elected, was not, nor by its nature could not have been, submitted to the said commissioner, and that proof before said commissioner on that subject should not have operated as proof to the court in the granting of said decree.

11. Petitioners are advised that it appears from the record of said cause that all of said pretended indebtedness for which decree was had against said defendant company, except the said Glenn claim, was *prima facie* barred by the statutes of limitation, and that no proof was submitted to the court granting said decree relieving said claims of indebtedness from the operation of said statutes, but that the same appeared to be stale demands.

12. Petitioners are further advised that the court appointing the said John Glenn as trustee—the said Glenn being at that time a non-resident, to-wit: resident in the State of Maryland—had no jurisdiction of the person of said trustee, and no jurisdiction to make said appointment. And petitioners pray that complainants in said cause may be duly served with legal notice of this their petition, and required to show cause, if any they can, why this petition should not be granted. Said complainants being John Howard, Esq., administrator *de bonis non* of the estate of W. W. Glenn, deceased, the Baltimore and Ohio Railroad Company, and various others, as appearing from the records of said cause.

And petitioners verifying the foregoing grounds by the records of said cause here in this court remaining, pray that said *ex parte* decree may be set aside and a rehearing had, to the end that equity may be done, and will ever pray, &c.

A. H. COX,
Pet's Att'y and Counsellor.

At a Circuit Court of the county of Henrico, continued by adjournment, and held for the said county, January 27th, 1885.

Glenn's adm'r, &c., Pl't'ffs.
against
The National Express & Transportation Co. & others, Def'ts.

On motion of the complainants the other creditors whose claims

were established by the decree entered in this cause on the 14th day of December, 1880, it is ordered that the order entered at Rules on the last Monday in May, 1884, in the matter of the petition of Thomas J. Jennings, Goode Bryan and Charles B. Purcell be set aside, and by leave of court said complainants and creditors this day filed their joint and several demurrers and answer to the said petition, and the hearing of the same is continued until Tuesday, the 3d day of February next.

Demurrer and Answer to the foregoing petition.

In the Circuit Court of Henrico county:

Glenn's administrator and others
vs.
The National Express and Transportation Company and others.

In the matter of the petition or bill of Thomas J. Jennings, Edward B. Purcell, and Goode Bryan, stockholders of said company, in behalf of themselves and for all others in like interest.

The joint and several demurrer and answer of John M. Glenn, administrator d. b. n. of the estate in Virginia of W. W. Glenn, dec'd, (recently appointed as such in place of John Howard, who was appointed and qualified only for the special purpose of reviving the suit upon the death of John W. Wright, formerly administrator, and who was removed at his own request and in accordance with the understanding at the time of his appointment and qualification,) the Baltimore and Ohio Railroad Company, the Bank of Commerce (of Baltimore), Francis Murray, for the use of John R. Terry, &c.; Henry M. Bash, trustee; Luke H. Miller, the Philadelphia, Wilmington and Baltimore Railroad Company, the Richmond, Fredericksburg and Potomac Railroad Company, the Richmond and Danville Railroad Company, the Wilmington and Weldon Railroad Company, in behalf of themselves and all others, creditors of the said National Express and Transportation Company, whose claims against said company are established in this suit, to a certain petition or bill filed on the 11th day of April, 1884, by the said Thomas J. Jennings, Charles B. Purcell, and Goode Bryan.

The said demurrants, jointly and severally, say that the said petition or bill is insufficient in law, and ought not to have been permitted to be filed, and for reasons appearing upon its face and upon the face of the record in this suit, to which it refers, and which is to be considered in connection therewith, they, jointly

and severally, demur to the said petition, and pray that it may be rejected and dismissed with costs.

And without waiving, but still insisting upon their said demurrer, the said creditors, for answer to the said petition, say that they promptly, by counsel, entered their appearance to the said petition, at the May rules (1884), by a special appearance, filed in writing, prayed to be considered as part hereof, and that they were then, and have at all times since been, in readiness to give the said petitioners a hearing upon their said petition; and that as they promptly appeared to the same to prevent delay and expense, so they have ever been willing and anxious that that object should be accomplished by a speedy hearing, and that it has been by no fault or default on their part that such hearing has not before been had; and while they do not impute to the said petitioners intentional delay in this matter for wrongful purposes, certain it is that the delay has operated to the advantage of the petitioners by procuring continuances and preventing a trial of the suits in Georgia, brought by the trustee against them under said decree of the 14th December, 1880, because of the pendency of said petition in this suit; and certain it is that the pendency of the said petition has operated greatly to the detriment of these respondents and to the efficient execution of the said decree and of the trusts of the deed of trust of the company, which, by said decree, for the first time after a lapse of fourteen years, was placed in a condition to be executed. For, as will hereinafter more fully appear, the pendency of said petition, and others recently dismissed by this court, has disastrously retarded and in large part suspended the execution of the said decree, and of course the trusts of said deed, to the incalculable loss of the trust fund and the imminent danger of its inadequacy to satisfy the said trust: while all of the courts, before which, upon suits brought by the said trustee against stockholders by authority of said decree and said deed of trust, in which a trial has been had, have uniformly sustained the validity of the proceedings of the Chancery Court of the city of Richmond, in which the suit was instituted, the trial of a vast number of suits pending in the different States has been virtually arrested by the pendency of said petitions.

Respondents further state that already three several similar petitions have been filed by delinquent stockholders in behalf of themselves and others, and after a full hearing such redress was had by compromise as was satisfactory to them as representatives of all of the stockholders, as will be fully hereinafter shown, and respondents here *in limini* respectfully protest against the hardship and injustice of having, from time to time and term after term, to be called upon to answer petition after petition, without end, of a few out of a thousand stockholders of a company, whose only claim to *locus standi* in court is grounded upon their own laches and default

for nineteen years, in the performance of plain, legal, and moral duties of the highest obligation.

In the hope and trust that this will be the last of such petitions permitted to be filed, or entertained for any purpose, these respondents will proceed to answer the same, by way of convenience to this court, now new to the case (from recent transference to its jurisdiction), and to save time and labor in specially referring to the voluminous proceedings at large.

And in the first place, respondents say that it is true the said petitioners were not made parties defendant, and for obvious reasons; in the first place, they were neither necessary nor proper parties, and might have successfully demurred to the bill if they had been made parties, and secondly, because "living in a distant State" they were beyond the jurisdiction of the court, and could not by any means be served with process, if proper parties, which they were not.

The whole proceedings were had to obtain the due execution of the trusts of said deed of trust executed by the company on the 20th September, 1866, for the payment of its debts, and was brought by leading creditors in behalf of all secured by the deed against the company, its officers and the trustees in the deed, and it is new law, that in a suit to enforce the execution of the trusts of a deed of trust made by a corporation to pay debts or to foreclose a mortgage given by a corporation for the same purpose the stockholders in the corporation are either necessary or proper parties. By the very constitution and nature of such an organization, the corporation and the corporate agents represent the stockholders, who act and are acted upon only through them.

And now taking up *seriatim* the enumerated grounds of equitable interference in behalf of said three small stockholders:

1. As to the first ground, to wit: That there was no appearance for any of the defendants in said cause, against whom substantial relief was prayed, respondents say that the statement is not true in fact, because the trustees did appear, and important relief was sought and obtained against them in removing them from office, but that assuming the allegation to be entirely true, it is a matter for which these respondents are not responsible, as it was not in their power, nor was it their duty, if in their power, to compel the defendant company to appear and defend itself; and respondents further say, that if the petitioner and his co-stockholders did not choose to keep up an efficient directory for due attention to their affairs, it was their own fault and default, and they cannot plead their own laches as a ground for setting aside a decree obtained upon process against this company, duly served according to law. These respondents were constrained to take a decree against the company by default, or not at all, and they have yet to learn that a decree had by default, upon process duly served, is not as valid

and binding as any other on all the parties against whom it is so taken, and they are advised that if the law were otherwise, adversary judicial proceedings would be impossible.

2. As to the second allegation, to-wit: That there was no relief decreed against any defendant in said cause who did appear, respondents say the same is not true, because the trustees as aforesaid did appear, and practical and important relief was obtained against them in the fact of their removal; but if the allegations were true, respondents would be at a loss to see in the circumstance any reason to set aside said decree, unless the jurisdiction of the court, in the administration of justice, is to be made dependent, as now contended, upon the pleasure of the defendants sued, and can be defeated at will by their voluntary disregard of the process of the court.

3. In respect to the third allegation, to-wit: That judgments to a large amount were granted in favor of various parties who had never by proper proceedings become parties, the statement is wholly untrue, and must have been made in profound misconception of the nature of the proceedings had before a commissioner in Virginia, taking accounts under an order of court upon a creditors' bill of debts secured by a trust deed and to be paid out of the trust fund thereby granted for the purpose. The report of the commissioner of the 19th of June, 1880, was but the execution in the usual and regular way of the decree for an account of the debts and assets of the company entered 6th October, 1879, and in point of fact every claim proved before the commissioner and established by the court in its decree of December 14, 1880, was represented by counsel and known to be so both by the commissioner and the court, and the fact of such representation appears of record.

4. In respect to the fourth allegation, it is somewhat the same in substance as No. 3, and is based upon a like misconception of the nature of the proceedings under a creditors' bill and the common practice therein. The company was first duly served with process in the manner prescribed by law, and the cause having been duly matured, the said order for an account of debts and assets was entered on the 6th of October, 1879, and after due publication of the time and place of taking said accounts, the same were duly taken and reported, and the said company and all parties concerned had full legal notice of all the said proceedings in the manner prescribed by statute law and familiar in practice in Virginia.

5 and 6. Regarding the alllegations contained in specifications No. 5 and No. 6, of said petition, respondents are advised that taken together they constitute but one ground of contention; which is that process was not duly served upon the company because it was served by a deputy sheriff, whose superior officer was as administrator in Virginia of W. W. Glenn's estate the com-

plainant in the creditor's bill. But respondents say that here again the petitioners have entirely mistaken the law and practice thereunder in Virginia. The service of the summons as to the company was a good and valid service. The sheriff was not a party in his own right, and was party only as auxiliary administrator of a foreign intestate, who owed no debts in this State, and owned no property in this State, except the claim in this suit, but if the sheriff had been plaintiff in his own right, by the law of Virginia the summons might have been served as a notice is served, and a notice may be, and constantly is served, by the plaintiff himself.

And in the absence of an express statute authorizing this to be done, by the immemorial common law in force in the State, a sheriff, though plaintiff, may serve a summons in a suit. Here the sheriff was in point of fact merely a nominal and technical plaintiff (the real person to receive from the court or from the trustee in the deed of trust, being the Maryland administrator of said W. W. Glenn's estate), and the fact is that John M. Glenn, of Baltimore, Maryland, one of the children of said W. W. Glenn, is now the administrator in Virginia of said estate, and the further fact is that said sheriff, nominal plaintiff as aforesaid, was only one of many plaintiffs who were in legal effect all of the creditors of the company, in whose behalf the suit was brought, and who subsequently appeared therein and took the benefit thereof. The service was in accordance with the long usage and practice of the courts of this city, and of the said Chancery Court of the city of Richmond, in which the suit was brought, ever since it was a court, and no question was ever made about the regularity of such a service, until made in this case. But if the service was irregular, which is denied, the objection should have been made by the company itself by plea in abatement, and could not be made now even by it after a decree by default. Much less can it be made by defaulting stockholders, debtors to the company, in order evade payment of the company's debts out of a trust fund for that purpose wrongfully kept in their hands. And the objection, if valid, would be equally valid in an action at law by the trustee upon said assessment against said stockholders, as if made in this suit. But the objection is frivolous, as has been shown.

7. As to pretension No. 7, respondents are advised that all of the parties were before court necessary for the jurisdiction it assumed and exercised. All of the creditors of the company were duly brought before the court by the creditors' bill and the proceedings thereunder. The company was duly served with process, as were also the president and directors and the trustees, and the trustees appeared and answered the bill. The whole object of the suit was, in general terms, to obtain an execution of the trusts of said deed of trust executed by the company for the payment of

its debts, and to this end an assessment upon the unpaid subscriptions of the stockholders, conveyed by said deed as debts due to the company, and which, without such deed, were pledged by law to the payment of the company's debts.

And the novel proposition is now asserted that the debtors to the company who, by the act of the company, owe that fund to the trustee, were necessary individual parties to a suit authorizing the trustee to collect the trust funds in their hands; that is to say, in a suit against a corporation to enforce the payment of its debts out of the corporate property, it is necessary to have personally before the court all of the debtors to the corporation, because the money is to come out of them with which the debts are to be paid.

The petitioners, by becoming stockholders, without paying their subscriptions in full necessarily became debtors to the company according to the terms of the contracts of subscription. But the fact of such indebtedness, while it created an obligation of payment, conferred no rights upon the debtor as such. All of the rights of such a person were the inchoate rights of a stockholder, and accrued to him only in that capacity. And then the question arises whether, in a suit against a corporation to enforce the payment of its debts, the stockholders as such are necessary parties, and that question answers itself. The distinctive characteristic of a corporation or joint stock company of this kind, the chief, if not only fundamental, element and condition of its existence, is the faculty conferred upon a number of persons of contracting and being contracted with, and of suing and sued upon such contracts as one person, in the name and by the instrumentality of a collective agency, and its charter is but an agreement between them and the State by which the corporators or members of the company consent in advance to that mode of business and of procedure, and hence notification of legal proceedings, given in that mode, is binding on the collective body and upon each and all of its component parts. It is a great privilege and convenience for a multitude of persons to be able to contract and be contracted with, and to sue and be sued as one person, and to be liable only for a specified amount for the contracts thus to be made and enforced; and when contracts have been thus made and suit has thus been brought, and jurisdiction thus acquired to enforce them, it does not lie in the mouth of any member of the company to say, that in addition to suing and serving process upon him and his associates collectively, in the manner agreed upon before hand in their charter or articles of association, and thus after having fully obtained jurisdiction to enforce the social contracts out of the social property upon the express terms upon which those contracts were made and that property acquired, it was also incumbent on the creditors, who had trusted to and acted upon that agreement and basis of things, to sue each corporator individually in the same suit, and serve him

individually with process, as conditions precedent to jurisdiction over the corporate contracts and property. By the charter of this company, constituting with the general statute law of the State, its articles of association, it is expressly provided that J. E. Johnston and others named, and their associates, successors, and assigns should be a body corporate and politic, by the name of the National Express and Transportation Company, for the purpose of an express and transportation business, and as such to sue and be sued, plead and be unpleaded, contract and be contracted with, and should have power to make ordinances, by-laws and regulations for the government of all under their authority and the proper conduct of its affairs; and it was further expressly provided, that the said company should elect "stockholders to act as directors, who shall represent the said company and manage the business thereof;" and in pursuance of these provisions there was constituted and continued a president and board of directors as active managers of the company, having full power and charged with the duty of representing the company and taking care of all of its affairs. By the general law of the State and the express terms of said charter, said officers were to continue in office until their successors should be appointed. And by the general law of the State also said corporation was to continue in existence, and was to sue and be sued in respect of its contracts and property indefinitely until all of its liabilities should be enforced and its property distributed among those entitled thereto. It was upon these conditions and this basis and understanding that credit was given by the public to this company for whatever it required in the prosecution of its business, and it has been upon the same conditions, basis, and understanding that this suit was brought, and has been proceeded in to enforce the liabilities thus contracted. And these respondents are advised and insist that no one or any member of the more than one thousand persons who compose this company, and who are scattered over twenty-one States and two continents, can acquire any right to set aside the fundamental conditions aforesaid, or claim to be individually sued upon the corporate contracts, by reason of the failure and neglect on their part to keep up an efficient directory to represent them in respect of the business of the company and all litigation touching the same. By their laches and the dereliction of their agents, encouraged and permitted by their own acquiescence and example, they could neither deprive the creditors of the company of plain legal rights acquired under its charter and the general law of the land, nor create any new rights for themselves: And it would be monstrous if contracts authorized and made under a fundamental law, with one juridical person, and to be enforced by suit against one juridical person, the legal representative of a thousand or any number of natural persons, could thus, in defeat of law, right, and

justice, be converted into individual contracts made with the thousand natural persons, and be enforced only by suit against each *eo nomine*, scattered in different jurisdictions over the face of the earth and impossible to be reached by legal process. Respondents are advised that the stockholders of this company, after having agreed to be contracted with and to be sued in the manner above stated, and taking the chances of making a profitable speculation in that way, upon a limited liability, could not elect, when the speculation proved disastrous, to abandon the enterprise, throw all the burden of its losses upon their creditors, and by their negligence and default fail to keep up an active representative agency, and then claim immunity from the legal effect of a decree rendered against the company in accordance with the terms of their original agreement and the express provisions of statutes enacted to prevent such an outrage.

Said petitioning stockholders, being citizens and residents of Georgia, were in fact out of the jurisdiction of this court and could not personally be brought within it by any process of law, and it is not for them to complain either of not having been individually sued themselves or that other stockholders, residents of Virginia, were not so sued, when those stockholders have not chosen to make such complaint on their own account, and who, if they had been sued could have successfully demurred to the bill for having made them parties, which has been the law for two hundred years.

Upon the whole, respondents are advised and insist that said decree is a valid decree against the said company: that if it is so valid against the company, it is alike valid against the stockholders and they are bound thereby; that if it be not so valid, by reason of the personal absence of said petitioners, they can take advantage of the fact elsewhere and in every jurisdiction as well as in this suit; that they have been by their own agreement in advance embraced in the express terms of the charter of said company lawfully sued in the name and by the agency of the company, whose directory represents them in all things; and that the validity of these proceedings cannot be impaired by virtue of the nineteen years default of the petitioners in providing themselves better representatives, or by virtue of their neglect now to call upon those representatives to act or to take any steps towards replacing them by others more efficient in attention to the business of the company, or by virtue of the profitable immunity which the said stockholders have so long enjoyed and secured to themselves, simply by doing nothing towards the fulfillment of their clear duty, and by that means of interested laches, to the utter disregard of the rights of the creditors, have avoided the assessments necessary and proper to be made for the payment of the debts of the company, and which it would have been the first business of a faithful directory to make

and assist in enforcing by the trustees charged to collect the same. The pleadings, proofs, records, and proceedings had and filed in this case abundantly show that it was only after having been obstructed and baffled for fourteen or fifteen years by the officers of the company (allowed to remain in office by the stockholders) and by the original trustees in the deed of trust (selected *in invitum* as to the creditors), who were acting in concert with prominent stockholders that the creditors were at last enabled, by getting possession of the books of the company in 1879–'80, to obtain the evidence essential to the prosecution of this suit, the institution of which was rendered necessary by the said profitable laches of the stockholders and the co-operative inaction and default in duty of their agents and trustees. In point of fact, by a fraudulent general stockholders' bill against the company, its officers, and the trustees in said deed pending in the Circuit Court of the United States for the Eastern District of Virginia, from the 8th day of August, 1866, until the 11th day of December, 1880, the trustees in said deed were enjoined and restrained from proceeding to execute the trusts in favor of the creditors, and the injunction was then dissolved and the suit dismissed only on the motion of said creditors, in order that they might be disentangled by the pendency of those proceedings in the prosecution of these instituted by themselves. And a similar general stockholders' suit against the said company, its officers, and the said trustees, originally brought in a State court of the city of New York, in September or October, 1866, and afterwards removed to the Circuit Court of the United States for the Southern District of New York, is still pending, and a similar injunction is still in force. The substituted trustee appointed by the Chancery Court of the city of Richmond, and now executing the duties of his trust under the supervision of this court, has not been able to proceed against the stockholders in that State because of the pendency of that suit and injunction, and he has been deterred from appearing therein and asking for a dissolution of the injunction because of the successive petitions filed by different sets of stockholders in this suit praying for a rehearing of said decree of the 14th of December, 1880, and obstructing its execution in every possible way. During the unmolested pendency of the said stockholders' suit and injunction in the Circuit Court of the United States for the Eastern District of Virginia, the stockholders everywhere seemed to be content, as inaction in the collection of unpaid subscriptions for satisfying the debts of their company was continuing exemption on their part from doing their duty in bearing the losses of their speculation instead of casting them upon their creditors. But as soon as those creditors, after so many years of vain effort, succeeded at last in 1879–80, in obtaining the books of the company, and thus the evidence essential to the successful prosecution of this suit, that is to

say, essential to the ascertainment of the debts of the company, in order to the levying of a proper assessment, and to the discovery of the names and locality of the stockholders in the different States, the amount of their several subscriptions, the assignments of stock, and the several assignors and assignees thereof, all of whom are by express statute made responsible for the payment of the unpaid subscriptions; as soon as the long-baffled and defrauded creditors, having obtained these means of self-protection proceeded regularly in accordance with the statute law and the general and established principles and practice of chancery, to have done by the court, what the official agents of the company, the company itself, its stockholders and its chosen trustees, had so long failed to do, and had obstructed and prevented from being done, and the decree of December 14th, 1880, was entered, and an efficient trustee appointed clothed with the power and duty of suing the defaulting stockholders for an assessment upon their unpaid subscriptions,—no sooner was this done than a new system of laches was set on foot by different sets of stockholders—that of filing petitions in this suit for a rehearing of said decree and the arrest of the whole proceedings.

All of the great labor, trouble and expense of this suit, necessitating besides large home expenses and costs, the employment of counsel and institution and costs of suits in twenty-one different States of the Union against recusant stockholders, would have been long ago avoided if the stockholders themselves had done their plain duty. And now when sued on the original decree of assessment in this suit of December 14th, 1880, as the said petitioners have been sued to compel the enforcement of a long-neglected and advantageous breach of legal and moral obligations of the highest dignity, they come forward at last, at the end of the law in their several States, and to avoid payment of the judicially ascertained debts of the company, seek to get rid of a decree rendered by default, when the default was due to their own long laches and neglect of duty, alike to the creditors and to themselves.

And they do this without offering any indemnity or security against the great loss and damage that must necessarily result from setting aside said proceedings, which would suspend or set aside also the hundreds of suits based thereon in the different States; render useless the large expenditures already made or incurred in costs and counsel fees therein, as well as in this, the mother suit; and without offering any indemnity or security against the infinitely greater loss and damage to the trust fund by reason meanwhile of the death, insolvency and embarrassments of other stockholders, during the delay incident to the pendency and prosecution of proceedings *de novo* in this court, at the instance of these three Georgia stockholders, of whose solvency nothing is alleged or known.

And respondents are reliably informed, and here state the fact to be, that the great majority of the Georgia stockholders are embarrassed, if not insolvent, and that it will be difficult, if not impossible, to collect from them by any process of law even the assessment made by said decree.

Respondents, in this connection, beg leave to refer, as if herein incorporated, to the various official reports made by John Glenn, trustee, showing the condition of the trust fund and also showing how absolutely necessary it is that the promptest and most efficient steps should be taken for the further collection of the trust fund necessary to pay the large indebtedness of the company, and the great expenditure of litigation and costs in collecting the same. It is extremely doubtful, indeed, whether the whole of the solvent subscriptions will pay the debts of the company and the expenses of enforced collection. And it is under these circumstances that three only, of a thousand stockholders, and these in a distant State, and who dispute the fact of their being stockholders at all, gravely ask this court to set aside all of the proceedings of the chancellor of the Chancery Court of the city of Richmond regularly had in this cause, and all of the proceedings based thereon already had in this honorable court since the cause has been transferred to its jurisdiction.

8. In regard to the allegation that it appears from the record that said decree by default was granted without proof being made to the court that the precedent conditions of the charter authorizing the said defendant company to sue and be sued and to do business and make contracts were ever complied with, respondents say that the fact of the legal organization and existence of said company was not put in issue in this suit, and could not, indeed, have been thus collaterally inquired into. But if the fact of such organization, or any fact necessary to show the same had been put in issue, it would have been proved.

9. In respect of the allegation that it appears from the record that the original contracts of subscription were never placed in evidence before the court granting said decree, respondents are advised that the same is wholly immaterial. By express statute the persons in whose names shares of the stock stand on the books of the company are the owners thereof as regards the company, and the commissioner properly reported to the court from the books the stock thus appearing to have been taken and held; but neither the commissioner nor the court undertook to indicate or determine who were or are the stockholders in said company, which, indeed, would have been an idle absurdity and impossibility. When persons are sued upon said decree as stockholders, it will be open to them to show, if they can, that they were never owners of stock in the company, and if successful, will defeat the suit. That course is entirely open to the petitioners in the suits brought against them

by the trustee, in the State of Georgia, and the jurisdiction to pass the said decree in no manner depended upon the fact whether or not the petitioners, or any of them, were original subscribers to said stock, or whether or not their original contracts of subscriptions were before the court when rendering said decree.

10. In reference to the intimation in said 10th specification, respondents say that in point of fact full proof was before the commissioner, in the books of the company, and otherwise, of the legal existence of said company and of the regular election of the officers named in the original and amended bills, and that ample proof appears in the record of every jurisdictional fact necessary for the maturity and proper hearing and adjudication of the suit, and the court so held in the said decree, wherein it is recited and determined that the cause had been regularly matured and proceeded in as to all of the defendants. Said petitioners do not venture to make any averment to the effect that said corporation has no legal existence, or that its said officers were not duly elected, but only that proof was not furnished as to the same. Respondents are advised that the legal existence of said corporation is a matter that can not be inquired into in this collateral way, but that if it could be, it was not necessary to furnish proof of a fact not put in issue by the pleadings, and that for all of the purposes of this suit, it was sufficient to aver and show that the said company acted as a corporation, and that in the absence of its reputed president, the summons against it was duly served upon the only cashier it had in the city of Richmond, and also upon one of its directors, resident in said city; and respondents say that not only was this done, but that for four successive weeks a copy of said summons was duly posted, and was also duly published in the Richmond *State* newspaper, published in the said city, which of itself, in the absence of a proper officer upon whom service could be made, would have been, by express statute a good legal service upon said company.

11. As to the intimation that the claims established by the said decree, except the Glenn claim, were barred by limitations, respondents say that no plea of limitations was filed to any of said claims, but that if such plea had been filed, all of said claims were secured by the deed of trust mentioned in the proceedings, and that as to remedies against the trust fund thereby dedicated to their payment, no statute of limitation has any application, and that the remedy under said deed of trust will not be affected by any lapse of time short of the period sufficient to raise the presumption of payment. And it abundantly appears by the record that all of the delay in the prosecution of said remedy arose from the illegal and wrongful conduct of the officers of said company, and the trustees of said deed alike in failing to execute said trust and in thwarting the efforts of the creditors to enforce execution of the same by concealing and withholding from them the stock

and other books of said company, which, indeed, were only made accessible for the purposes of this suit in the fall of the year 1879, when, for the first time since 1867, they were produced by the surviving trustees. For a brief period in 1866, and 1867, the said books were in the possession of a receiver of said company, appointed by the Circuit Court of Baltimore, but the order of his appointment was soon revoked and set aside by the Court of Appeals of Maryland, and the said books restored to the trustees, who, ever since, until the fall of 1879, as aforesaid, acting with the knowledge and approval of the president and other officers of the company, refused to permit any creditor to have access to them. And, in the meanwhile, the stockholders of said company, including the said petitioners, have enjoyed the advantage, now sought to be indefinitely prolonged, of keeping in their pockets the trust fund dedicated alike by the law and by said deed to the payment of the debts of the company, and by abandoning their duty and supinely doing nothing, have acquiesced in and secured the profitable wrong of hindering, delaying, and defrauding the creditors, now pleaded to perpetuate that wrong. When said petitioners subscribed for their stock in said company, they well knew it was to be paid for only as called for by the president and directors, and in point of fact, it appears from the books of the company that all of them actually paid one or more assessments thus made upon them. As stockholders, they afterward knew that the company stopped business, leaving a large amount of debts contracted and unpaid. With this knowledge they have permitted those debts to remain unpaid, thus throwing the losses of their speculation upon the public. They have failed to keep up an efficient directory to attend to their affairs, and have thus escaped any further assessments. Their agents have prevented the creditors from finding out the names and localities of themselves and their associate stockholders by withholding the books of the company. And after having in this manner obtained immunity from honest payment of their debts for nineteen years, they now come forward and ask that a decree establishing those debts should be set aside more than four years after it was entered, in order that, in the place of their legal representatives, they may plead the statute of limitations!

Respondents are advised, as before stated, that neither the said petitioners nor any other stockholders were necessary parties to the said suit at the time said decree was rendered, and that the same is valid and binding upon the company and all of its stockholders. Respondents are further advised, that no stockholder, or set of stockholders, is entitled to be permitted now to come in and ask either for a rehearing or a review of said decree; that the only lawful party to take such a proceeding is the company represented by its president or other proper officer, and that if such action was

thus taken by the company, it would have no ground to stand on; that the said decree, by default, having been duly obtained according to law, is as valid and binding in law as if obtained after appearance and contest by the company; that the omission or neglect of the company to appear and defend the suit was the omission and neglect of all the persons composing the company, whose duty it was to have an efficient directory in office for the purpose of attending to the company's affairs; that to permit now one set of stockholders to appear and attack the said decree would be to open the door wide for different sets at as many different times and in such numbers as might suit their convenience or fancy, to do the same thing, and any decree that this court might enter would be subject to the same successive and unending guerrilla warfare, in which no victory of the creditors could settle anything, so long as any of the thousand stockholders of this company remained to come forward and ask to renew the attack; while, in the meantime the debts of the company, admitted to be of large amount, would go indefinitely still longer unpaid and the solvent stockholders become fewer and fewer the greater the delay thus effected, to the advantage and immunity of these defaulting speculators upon the public, whose nineteen years dereliction of duty is made the claim for continued dereliction.

This course has already been pursued in this case by several separate sets of stockholders as above stated, and the relief they were content to take was granted to them and to the whole body of the stockholders in whose behalf they assumed and were permitted by the court to act. That relief was within six months from the 21st day of July, 1883, to get a release from the trustee of all indebtedness to the company, upon payment of twenty-five per cent. of the same to the trustee. These respondents consented to that decree and are bound by it, and they are advised and insist that, under the circumstances, all of the stockholders are also bound thereby. For while the court reserved for future consideration all questions raised by the petitions of said stockholders, yet all of said stockholders united in consenting to said decree as a compromise for the benefit of themselves and of the whole body of the stockholders in whose behalf said petitions were filed and who in legal effect and contemplation were represented by said acting stockholders. Actual notice of said compromise was given to the present petitioners as well as generally to stockholders at large. All who desired had an opportunity to take advantage of the action thus taken by some in the name and on the behalf of all. Respondents are advised and insist that unless each successive set of stockholders who may choose to take the chances of profiting by a like proceeding is to be permitted term after term and year after year to obstruct the course of justice and arrest the administration of the trusts of said deed, it must be held that the end of

such proceedings has already been reached by the said decree of July 21, 1883.

Respondents are advised and insist that if, contrary to their most earnest and respectful protest, said petitioners should be allowed further to proceed in their undertaking, it should be only on being put upon terms to indemnify and save harmless these respondents for any loss or damage they may suffer in the premises, and upon giving ample security for the same, and also to pay the costs that may be incurred in this court and the Court of Appeals, should the case go to that court. By coming into this suit, in which they were not necessary parties, and, as these respondents are advised, were not proper parties, they have become actors and are amenable to the rule that they who seek equity must do equity. It is just not only that they should be required to pay what they owe to said company, but also the increased costs of this suit, and to furnish security ample to protect and indemnify all interested in the trust fund against loss to that fund by reason of the suspension of the proceedings instituted by the trustee to collect the assessments authorized by said decree of December, 1880, or by reason of loss by the prevention of further assessments now known to be necessary to complete said fund.

As to specification No. 12, objecting to the appointment of John Glenn as trustee because he is a resident of the State of Maryland, respondents respectfully say that the great majority, in value, if not in number also of the creditors, are residents of Maryland; that said Glenn was the unanimous choice of all of the creditors; that he gave bond in the penalty of $100,000 for the faithful performance of his duties as such trustee, with sureties qualifying to responsibility for $300,000; that he has so far fulfilled his duties with rare intelligence, diligence and fidelity, to the entire satisfaction of the court and the creditors, and to the dissatisfaction only of defaulting stockholders upon whom the due exercise of the faculties fitting him for the office is their only cause of complaint against him, and that such complaint is only compliment and commendation; and that if the said three small Georgia stockholders, or any other stockholders, will only pay to the said trustee what is now, or may hereafter by future calls, become due to him by reason of assessments upon their unpaid subscriptions, these respondents hereby engage to release them from all obligations to pay anything more on said subscriptions, so far as these respondents are concerned, and the receipt of the trustee for the same will constitute a full bar to any other or further claim for the same.

THE SAID DEMURRANTS AND
RESPONDENTS ABOVE STATED.

January 28, 1885.

Affidavit to the foregoing answer is hereby waived.

A. H. COX,
Sol. for Compl'ts.

Richmond, January 21, 1885.

Original and full report of the Business Committee referred to on pp. 97, 98 of the printed record, and filed as an exhibit with answer of the creditors to petition of Jennings and others.

The business committee having examined into the affairs of the company, as well as the limited time at their disposal has enabled them to do, beg to make the following report:

No. of shares subscribed for,	43,556	
On which calls have been made of 20 per cent., amounting to	$871,120 00	
Amt. actually paid on said calls,	$534,748 00	cash
In notes of the parties,	54,436 00	
Making	$589,184 00	
Calls in arrear amount to	281,936 00	
	$871,120 00	
Nothing whatever has been paid on	557	shares
The directors agreed to consolidate	3,512	"
No. shares on which calls have been paid,	39,487	"
	43,556	"
No. shares on which all calls have been paid,	15,188	
" " in arrear,	28,368	
	43,556	
Indebtedness of Co. as reported by its officers,	$273,000 00	
But the Committee think it safe to assume them at	$300,000 00	
Further debts to accrue by Nov. 1st, 1866,	25,000 00	
Estimated loss on leases and contracts,	25,000 00	
	$350,000 00	

The property of the Co. cost, according to books,		$212,000 00
Other assets representing,		55,000 00
		$267,000 00
Assumed to produce,	$100,000 00	

The committee are informed by counsel that the company has no power to reduce the capital stock below one-third of the $5,000,000 required by the charter, say $1,667,000. They are further informed by counsel that the par value of each share cannot be made less than $100 as prescribed in the charter.

In order therefore to consolidate the stock the committee recommend that the 43,556 of subscribed shares be reduced to one-fourth that number, say 10,889 to be accomplished by the surrender of four shares on which $25 each has been paid and the issue in lieu thereof of one share of full paid stock of one hundred dollars. In order to effect this, and to raise a fund in addition to the assets now in the hands of assignees, to pay the entire indebtedness of the company, a further call of $5 per share on the 43,556 subscribed shares be at once made, making $25 in all.

The above proposition would, however, reduce the amount of stock below the one-third required by the charter. The committee therefore recommend that six hundred thousand dollars of preferred stock, bearing 8 per cent. interest, be issued in six thousand shares of one hundred dollars each to be sold at not less than par. This will increase the stock to the amount required by the charter and provide means for the successful prosecution of the company's operations.

They further recommend that a committee of five, consisting of one director, three stockholders, or proxy, not directors, and the superintendent, be appointed to negotiate for the sale of the preferred stock at once. Failing in the disposal of the preferred stock the president and board of directors will at once take such steps, by additional calls or otherwise, as may be necessary to enable the trustees to liquidate every just demand against the company and dissolve the corporation.

F. C. BARBER,
Chairman Bus. Committee.

Richmond, Va., October 10, 1866.

To the Chairman of the Meeting of Stockholders of the National Express and Transportation Company.

Depositions filed in open Court February 19, 1885.

In the Circuit Court of the County of Henrico:

Glenn's adm'r and others
v.
The National Express and Transportation Company and others.

In the matter of the petition of Thomas J. Jennings, Goode Bryan, and Charles B. Purcell.

To the said Thomas J. Jennings, Goode Bryan, and Charles B. Purcell:

Gentlemen,—Please take notice that on Saturday, the 31st of January, 1885, we shall, at the office of O. G. Kean, Esq., Goddin Building, at the corner of 11th and Bank streets, in the city of Richmond, between the hours of 9 A. M. and 5 P. M., proceed to take the depositions of Edward H. Fitzhugh, P. P. Winston, L. P. Winston, and others, to be read as evidence in our favor on the hearing of the above entitled matter, and that if from any cause the taking of the said depositions should not be commenced on that day, or if commenced, not completed, the same will be continued from day to day and from time to time at the same place and between the same hours until completed.

Respectfully yours,

THE COMPLAINANTS IN THIS SUIT, CREDITORS, &c.,
By Counsel.

Richmond, January 29, 1885.

Executed January 29, 1885, by delivering to Joseph Christian, counsel for the within named petitioners a copy of the within notice.

LEWIS P. WINSTON,
She'ff city of Richmond.

In the Circuit Court of the county of Henrico:

Glenn's adm'r and others
v.
The National Express and Transportation Company and others.

In the matter of the petition of Thomas J. Jennings, C. B. Purcell, and Goode Bryan.

To Thomas J. Jennings, C. B. Purcell, and Goode Bryan, Esqs.:

Gentlemen,—Please take notice that the depositions of Benjamin H. Berry, P. P. Winston, and L. P. Winston, taken by us at the office of O. G. Kean, Esq., in the Goddin Building, cor. 11th and Bank streets, in the city of Richmond, Va., in pursuance of notice theretofore given you, have been kept open, and will be kept open, for re-examination and cross-examination of said witnesses until the 19th day of February, 1885. Should it be desired by you, said witnesses will be recalled and re-examined and every opportunity given you for cross-examination, or at your option, they may be cross-examined upon their testimony already given. The notary is Conway Sands, Esq., cor. of said 11th and Bank streets, who will cause the witnesses to attend at any time you may appoint between this and the said 19th February, 1885.

Respectfully yours,

JOHN M. GLENN,
Adm'r, &c., of W. W. Glenn, dec'd, and the other compl'nts creditors of said defendant company.

By CARRINGTON & FITZHUGH and JOHN HOWARD,
Their Counsel.

Richmond, February 14th, 1885.

State of Virginia, city of Richmond, sct.:

I, F. H. McGuire, a notary public in and for the city aforesaid, do certify that Edgar W. Carrington, of lawful age, this day made oath before me in my said corporation, that on the 14th day of February, 1885, he delivered to Judge Joseph. Christian, attorney and counsellor at law, a true copy of the above notice.

Given under my hand this 16th day of February, 1885.

F. H. McGUIRE, N. P.

The deposition of P. P. Winston, L. P. Winston, and others, taken before me, Conway R. Sands, a notary public for the city of Richmond, pursuant to notice hereto annexed at the office of O. G. Kean, Esq., in the city of Richmond, on the 31st day of January, 1885, between the hours of 9 A. M. and 5 P. M., to be read as evidence in behalf of the complainants, creditors, &c., in the suit of Glenn's Adm'r and others, v. The National Express and Transportation Company and others, depending in the Circuit Court of Henrico county, Va., wherein Glenn's Adm'r and others are plaintiffs and the National Express and Transportation

Company and others are defendants, in the matter of petition of Thomas J. Jennings and als.

JOHN HOWARD, Esq.,

Counsel for complainants in above entitled suit and others creditors of said company whose claims were established by the decree of December 4th, 1880.

Mr. P. P. Winston, being duly sworn, deposes and says as follows:

1st question by Mr. Howard. Please state your residence, age and occupation?

Ans. I reside in the city of Richmond, I am fifty-six years old, and am deputy sheriff of the city of Richmond.

2d Ques. by do. How long have you been connected as an officer with the office of sheriff of the city of Richmond? Please state when your connection with that office commenced, and what positions you have held therein.

Ans. My connection with the office commenced about 1846–47 as deputy sheriff. I have been connected with the office ever since that time, except during the war and three years before the war; it being about seven years altogether that I was out of the office; the rest of the time I either held the office of deputy sheriff, or of sheriff, and have personally executed the duties of the same. During a part of that time the sheriff of the city of Richmond and the county of Henrico was the same person; and he and his deputies executed all the duties of sheriff in all the courts alike in the city and county, except in the Hustings Court of the city of Richmond.

3d Ques. by do. During the time you have been connected with said office, what has been the usage and practice, or manner of serving writs in cases in which the sheriff was plaintiff by virtue of his office, *i. e.*, as adm'r or executor, c. t. a., suing in behalf of the estate? State to whom, in such cases, have the writs been directed and by whom executed.

Ans. Since 1865 the universal practice has been to direct writs to the sheriff of the city of Richmond, and they have been uniformly served on the defendants by the deputy sheriff, and my recollection is, that that was the rule also before the war.

And further this deponent saith not.

P. P. WINSTON.

Mr. Benjamin H. Berry, having been duly sworn, deposes and says as follows:

1st Question by Mr. Howard. Please state your name, age, residence and occupation.

Ans. Benjamin H. Berry. I am thirty-nine years old; reside in the city of Richmond, and am clerk of the Chancery Court of the city of Richmond.

2d Ques. by do. How long have you been connected with the Chancery Court as clerk, and state if you have acted as clerk in other courts?

Ans. I have been clerk of said court ever since 1870. I qualified as clerk of the court in July, having been elected in May. I was clerk in other courts from 1863 up to that time.

3d Ques. by do. Please state what has been the usage, practice, or manner of directing and executing writs in the Chancery Court of the city of Richmond during the time you have been clerk thereof, in cases in which the sheriff of the city of Richmond, by virtue of his office, has been plaintiff, *i. e.*, as adm'r or executor of deceased parties, suing on behalf of the decedent's estate. State to whom the writs in such cases are directed, and by whom executed on the defendants.

Ans. They are directed to the sheriff of the city of Richmond, and generally executed by his deputy. So far as I know, that has been the universal custom.

4th Ques. by do. Was or not such the usage and custom in other courts of the State in which you acted as clerk?

Ans. Yes, sir, it was the same custom. During the twenty odd years in which I have been connected with clerks' offices that has been the universal custom.

5th Ques. by do. Look at the writ and service thereof, to be found on pages thirty-two and thirty-three, of the printed and certified record in this cause, and state whether or not the writs there appearing to have been executed upon the National Express and Transportation Company, was directed and executed in the usual way in cases in which the sheriff is plaintiff in the manner above stated?

Ans. I have examined the writ and am satisfied that it was directed and executed in the usual way.

And further this deponent saith not.

BENJ. H. BERRY.

Lewis P. Winston, Esq., another witness, being duly sworn, deposes and says as follows:

1st Ques. by Mr. Howard. Please state your name, age, residence and occupation?

Ans. Lewis P. Winston; I am twenty-nine years old, reside in the city of Richmond and am at present sheriff of the city of Richmond.

2d Ques. by same. Please state how long you have been con-

nected with the office of sheriff in the city of Richmond, as sheriff or deputy.

Ans. Fifteen years; during which time I was deputy fourteen years, and sheriff about one year. During the whole of this time, before I was elected sheriff, I was the principal deputy.

3d by do. Please state what has been the usage and practice during that time of directing and executing writs in cases in which the sheriff, by virtue of his office, has been personal representative, suing for the benefit of the estate of deceased persons. State to whom the writs have been directed and by whom they have been executed on the defendants.

Ans. Writs were universally directed from the Chancery Court of the city to the sheriff, and were executed by me as deputy. That has always been, and is now, the custom. In such suits brought in my name, my deputy executes the writs on the defendants; and I have always understood that was the previous custom in the office.

4th Ques. by do. Please look at pages thirty-two and thirty-three of the printed and certified record in this case, at the writ there appearing to have been executed on the National Express and Transportation Company, and also inspect the original writ and return now shown you and state whether or not the said writ was directed and executed in the manner above stated by you?

Answer. I have inspected the said writ and the return thereon, the original of which I now hold in my hand, and perceive and state that it was directed in the usual way and was executed by me on the said company.

5th Ques. by do. Please state whether or not you recollect to have executed personally that writ?

Ans. I distinctly recollect the fact. I made particular inquiries as to who were the officers of the said company, and the matters stated in the return are strictly true.

And further this deponent saith not.

LEWIS P. WINSTON.

State of Virginia,
City of Richmond, to-wit:

I, Conway R. Sands, a notary public for the city aforesaid, in the said state, do hereby certify that the foregoing depositions were taken and sworn to and subscribed before me at the times and place mentioned in the caption thereto, and I do further certify that the said depositions were kept open in conformity with the notice hereto attached until the 19th day of February, 1885.

Given under my hand this 19th day of February, 1885.

CONWAY R. SANDS, N. P.

Notary's fee for taking depositions, $5.

Decree of March 4, 1885, and opinion of Court.

In the Circuit Court of Henrico county, continued by adjournment and held for said county, March the 4th, 1885:

Glenn's Adm'r and Others v. National Express and Transportation Company and Others.	In the Circuit Court of the County of Henrico.

This cause came on this day to be heard on the papers formerly read and upon the petition of Thomas J. Jennings, E. B. Purcell, and Goode Bryan, and the demurrer and answer thereto of the complainants and the joinder of the said petitioners in said demurrer (there being no replication to said answer), and upon exhibits and examinations of witnesses filed, and by consent of parties by counsel was set down for argument, and was argued by counsel.

On consideration whereof, for reasons expressed in writing, herewith filed and made part of the record though not to be spread upon the order-book, the court doth adjudge, order, and decree that the said petition be dismissed and that the complainants recover of the said petitioners their costs in the matter of the said petition expended. But this decree is to be without prejudice to any subsequent application of the petitioners or other stockholders to reopen the decree entered in this cause on the 14th day of December, 1880, so far as may be necessary to inquire into the validity of any of the debts against said company recognized in said decree; such application to set out sufficient reason to justify the court in reopening the decree for said purpose, and to be accompanied with a tender of adequate security to pay all costs awarded to any party, and all damages sustained by any party by reason of such application, and in other respects to abide the judgment of this court.

And liberty is given said petitioners, or any other stockholders, to take such steps as they may be advised for requiring the surviving trustees, in the deed of trust in the proceedings mentioned, to render such further accounts as may be deemed proper, upon like terms as are above prescribed.

And the petitioners desiring to appeal from so much of this decree as dismisses their petition with costs, the court, on their motion, suspends that portion of this decree for twenty days from the date hereof; provided the said petitioners, or some one or more of them, or some one for them, shall give bond with good security, in the penalty of three thousand dollars, in the mode and with conditions prescribed by law.

Glenn's adm'r and others
v.
National Express and Transportation Company and others. } Opinion of court.

This cause has been transferred to this court by order of the Chancery Court of Richmond, of June 27th, 1884.

It comes before this court now upon the petition of Jennings and others, three citizens of Georgia, asking to set aside and rehear the decree of the Chancery Court of Richmond, of December 14, 1880.

That decree established the validity of the deed of trust of the defendant company of September 20, 1866; construed the deed as a conveyance of all the property of the company, including the unpaid subscriptions of stock; approved a report of its commissioner of the debts due by the corporation, and finding, in the absence of other property of the corporation, that it was necessary for the payment of these debts to resort to the stockholders for their unpaid subscriptions, substituted a trustee for the original trustees designated in the deed, and assessing upon the stockholders a contribution of thirty per cent. of their subscription, ordered the trustee to collect the same by suit or otherwise.

The substantial justice of this decree, as to the greater part of the creditors against the corporation, and the necessity of resorting to the stockholders to pay them, has not been, and cannot be, made matter of controversy. It is idle to cite authorities to sustain the fundamental principle of corporation law, that the unpaid subscriptions of stockholders are debts due to the corporation out of which the creditors have a right to be paid.

The only substantial objections to this decree are the allegations that the indebtedness of the corporation is less than that reported by the commissioner and confirmed by the court, and that the assessment upon the stockholders, made by the court, is therefore too large.

If this indebtedness of the corporation be less than the commissioner reported, it does not necessarily follow that the decree was wrong in the assessment made upon the stockholders. It is abundantly apparent that some assessment upon the stockholders was necessary.

To the extent of every dollar of their unpaid subscriptions they were holders of funds to which creditors had a right to resort. The assessment upon all of them was designed to call in these funds ratably, so as to equalize between the stockholders the common burden. If the assessment decreed by the court yields too large a sum to satisfy creditors, the stockholders will reclaim their

over-payments, if there be any over-payment. Whatever the hardship or suffering of the stockholder in making it, the rights of the creditor are of superior dignity, and in the interest both of stockholder and of creditor, it is better to have the assessment made at once abundantly adequate to discharge the debts of the corporation. *Kennedy* v. *Gibson*, 8 Wall. 505. It is now very questionable whether, viewing this record in the best light for the stockholders, the assessment ordered by the decree of December, 1880, will yield the sufficient sum, and it may be that a subsequent assessment will be necessary.

The petition in this case was allowed to be filed by the Chancery Court of Richmond April 11th, 1884. If this order had not been entered, and I were now called to consider the application to file this petition against the objections of the plaintiffs, I do not think that the leave to file ought to be given.

The petitioners do not even ask to be admitted as parties to the cause. They do not even admit that they are stockholders in the company. The petitioners are residents of another State, and the enforcement of the decree of which they complain was contemplated by the decree to be had in another forum. Their language is carefully guarded, therefore, so as to reserve to themselves defences in the courts of Georgia which the courts of Virginia upon their own application to hear them might reject. But in despite of their guarded language they have voluntarily subjected themselves to the jurisdiction of this court, and if no demurrer had been interposed, and the petitioners had been required to reply to the answer, and issue had been forced upon that, I would have been compelled to hold them to the jurisdiction of this court, and could not have dismissed them from the cause until after enquiry before a commissioner and ascertainment of their liability a decree could be entered against them, which would conclude all controversy as to them in the courts of Georgia.

But the demurrer has been interposed, and no replication to the answer has been entered, and in this condition of the pleadings the case, after elaborate and able argument, has been submitted to the court.

It was practically conceded in the argument that the stockholders were not necessary parties to the case, and that the decree complained of is conclusive against them when sued upon in other courts, of this or any other State. If it had not been so conceded the well considered judgment of the Court of Appeals of Maryland and the able and exhaustive opinion of Judge Alvey, concurred in by all of his brother judges in *Glenn* v. *Williams*, 60 Md. 119, would relieve me of any necessity to extend this opinion upon this point.

This opinion of the Maryland court appears to have been accepted, and its judgment followed in the United States courts of Louisiana, *Glenn, trustee*, v. *Soule*, 22 Fed. Rep. 417, and of Dis-

trict of Columbia in the case of *Glenn, trustee*, v. *Busey*, and in a State Court of California.

But it is urged that the decree against the corporation was practically a decree by default, and that the stockholders, who had no knowledge of the proceedings and no opportunity to protect their interests, should now, in the same court which rendered the decree, be permitted to be heard.

It is insisted that the corporation was never properly before the court, and that the court was without jurisdiction to render the decree. If this be so, it is never too late for the court to retrace its steps, and in whatever manner the fact is brought to the attention of the court, whether by a party to the cause or the suggestion of any outsider either as *amicus curiæ*, or otherwise, it is the duty of the court *ex mero motu* to rescind its action.

I am of opinion, however, that this corporation was properly before the court. Even if we were justified in considering the corporation as having expired or dissolved, the 31st sec., 56 ch., Code of 1873, continued its existence as long as might be necessary to enforce its liabilities and distribute its property among its creditors. The proceedings by or against it were required by the statute to be the same, whether it was a "living" or, as learned counsel for petitioners phrase it, a "going" corporation, or an expired corporation.

Now, ch. 166, sec. 7, Code, 1873, provides how process against a corporation must be executed. By the act of incorporation the city of Richmond was made the *habitat* of the principal office of the company. If the president of the company had been found here, process could have been served upon him. In his absence it could have been served upon the cashier or treasurer, and if there were none such, upon a director of the company. The act further requires, in order to render the service valid, that the return should show on whom and when the service was made, and that the persons so served were residents of the sheriff's bailiwick. Now this process was served upon M. B. Poitiaux, as cashier, and upon Joseph R. Anderson, as director, and the officer's return shows that both of them were residents of the city of Richmond; that it was executed upon both of them in the city of Richmond, August 8, 1879, by delivering to each a copy of process, and that the president of the company was not a resident of Richmond. Both Mr. Poitiaux and Gen. Anderson appeared and answered, and while they disclaimed right to answer officially, recognized in their answer the service upon them officially of the process in the cause. Now, if Mr. Poitiaux was the cashier or treasurer of the company, service upon him was sufficient. If he was not, there was no such officer of the company within the sheriff's bailiwick, and service upon a director was sufficient.

Gen. Anderson, in his answer, does not deny that he was a di-

rector. He admits that he had been, but states his belief that he had resigned. This answer, however, is sufficient to throw upon the plaintiffs the burthen of showing that he was a director when the process was served. With that *onus* upon them, the evidence in the record is abundantly sufficient. Gen. Anderson appeared as director in the very last meeting of the directors which was ever held, and that meeting was subsequent to the last meeting of the stockholders. He could, therefore, never have divested himself of his official relation to the company.

As to the objection that the service of process was invalid because made by a deputy of Mr. Wright, who, as sheriff, and administrator of Glenn was plaintiff, I think it is entirely without merit. No objection of this character has ever, so far as I have heard, been made in Virginia before. It is a matter of every day practice in every court in the Commonwealth, and has been from the earliest days of the State. The concurrence of professional opinion, both of the bar and the bench, through these many years, is alone sufficient to repel the idea that the practice had been in violation of law.

The summons being merely serviceable process might, at common law, well have been executed by the sheriff himself, though plaintiff in the suit, independently of our statute authorizing a summons to be served as a notice is served, which may be and is constantly served by the plaintiff. See Sewell on Sheriff, 46 Law Library, 88–89; *Mayor, &c.*, v. *Bubb*, 1 Dowl. Practice Cases, 151; *Mayor, &c.*, v. *Williams*, 17 E. C. L., (10 Moore) 266; Code 1873, ch. 166, § 5, § 2, § 6, ch. 163, § 1.

The corporation was then, in my opinion, undoubtedly before the court. But the answers of Poitiaux and Anderson made patent the fact that the corporation was not a *going* corporation, and I think that the attention of the learned chancellor ought to have been called at once to these answers, and enquiry had as to the facts upon which the jurisdiction against the corporation was assailed. And when it did appear that this dormant, if not dead, corporation was before the court, by service of process, upon officers who disclaimed right to represent it and refused to represent it, and that being before the court, creditors are asserting their right to have ascertained and determined the large amount of its asserted indebtedness, and that the only possible means of payment of their debts was by assessments on hundreds of absent stockholders, I think the court ought to have required the officers of the company, upon whom process had been served, to retain counsel to protect the interest of the company and its absent stockholders, with a pledge of compensation to counsel out of the assessments to be made upon these stockholders.

This, however, was not done, and the case proceeded to hearing

before commissioner and court without the appearance at any stage of the investigation of any party to represent the interests of the stockholders, and resulted in the ascertainment of the decree of December, 1880, of an indebtedness of some $500,000, and the necessity of a call upon stockholders scattered throughout twenty or more States for 30 per cent. of a subscription made fifteen years before the decree, and to which the mass of these stockholders had reason to believe that all obligations, if any, had been extinguished years ago.

There is an apparently imposing equity in the application of these petitioners. But this apparent equity depends upon the reasonable suggestion in view of all this record of practical injury. There are equities on the other side. The creditors of this company, whoever they may be or how ever large their debts, have equities very superior to those of her stockholders. The suggestion that, as to any of the debts, the Statute of Limitations could be pleaded, or ought to be pleaded, is without any merit. The stockholders were permitted by the company to retain the greater part of their subscriptions, but they retained it subject to call when needed to pay creditors of the company. As part of the property of the company, these unpaid subscriptions were conveyed to the original trustees for the benefit of creditors, and the substituted trustee represents the beneficiaries of that dedication, or, in other words, all of the creditors of the company. The conveyance of the company made these subscriptions a trust fund, and as to no creditor can the Statute of Limitations be pleaded in favor of this trust fund. Upon this familiar principle I hardly think it necessary to cite authorities and content myself with referring to two Virginia cases—*Smith* v. *R. R. Co.*, 33 Grat. 617; *Bowie* v. *Poor School*, 75 Va. 300.

Outside of this suggestion of the Statute of Limitations, neither in the petition nor the argument has there been any suggestion of doubt as to the validity of the claims against the company reported by the commissioner and confirmed by the court in its decree, except as to a single debt.

This is a very large claim, however, and if any of the stockholders desire to have the decree reopened for new enquiry as to its validity, and can in a subsequent petition show sufficient reasons to justify apprehension that injustice has been done in recognizing this debt, the decree now to be entered will reserve the right to make the new enquiry upon proper terms. I must say, however, that from my examination of this record in view of the objections to the debt assigned by counsel in argument, I believe the new enquiry will result in re-establishing the claim, and prove of no practical benefit to the stockholders.

It was further urged in support of the petition that the original

trustees had not been required to account, and have not accounted. This objection appears to have arisen from a partial examination of the record.

At the last term of this court the surviving trustees were required to account before one of the commissioners of the court, and Commissioner Leake's report under that order was presented and confirmed, showing an indebtedness of the trust to both of the surviving trustees.

If, however, any probable injustice was done to the stockholders in this settlement of the trustees' account while the corporation was practically without representation, opportunity will be afforded to reopen the accounts. But in reopening these accounts either to surcharge and falsify the trustees' accounts or to assail the validity of any debt which has been recognized by the court, it is only fair that the stockholders at whose instance it is done should give security to pay any costs unnecessarily sustained by the trustees or creditors in making such further enquiry.

The amount of the indebtedness of the company recognized in the decree of December, 1880, is very large, but quite one-half of it is now the cumulation of interest upon debts which have been unpaid since 1866–67. The principal of the indebtedness recognized by the court, when compared with the estimated indebtedness of the company by the stockholders and directors in their last official action, is very suggestive that the stockholders have suffered no wrong in the accounts taken in the cause.

From any presentation in the petition, or in the argument of counsel in support of it, I cannot now see that there has been any probable injustice done to the stockholders in the ascertainment of the debts due by the company, but if there has been any, the court will be held open for enquiry upon any proper showing of the necessity for such enquiry at any time before the debts are paid.

Leave to file further petitions contesting any of these debts and to assert any liability of the trustees will, therefore, be reserved in the decree for these petitioners or other stockholders conditioned upon the assignment of adequate reasons and tender of security to abide the judgment of the court.

But no petition will be entertained to arrest or delay the enforcement of the decree of December, 1880, so far as it requires the substituted trustee to collect by suit or otherwise the assessment upon the stockholders of 30 per cent. of their subscription of stock. If that portion of the decree could be suspended or arrested, I believe that the ultimate result would be of necessity to impose upon the now solvent stockholders the payment of an increased assessment to meet the unnecessary costs of protracted litigation and the cumulation of interest upon indisputable debts of the company. The principal of these debts was estimated at the meeting of the

stockholders held in this city on the 10th of October, 1866, to be, as of the 1st November, 1866, some $350,000. The decree recognizes a principal of less than $300,000. The monthly interest upon say only $250,000, is some $1,250, and has to be paid sooner or later by these solvent stockholders. In their interest, therefore, not less than in the interest of the creditors, I am of opinion that the decree for the collection of the assessment should be promptly and vigorously enforced.

Petition of John Glenn, trustee, filed March 25th, 1885.

Glenn's adm'r and others
v.
National Express and Transportation Company and others.

In the Circuit Court of Henrico county:

To Hon. B. R. Wellford, Jr., judge of said court:

The petition of John Glenn, trustee, respectfully states that all of the copies of the record heretofore printed, and which embraced all of the original and direct proceedings down to and including the decree of January 3d, 1881, have been exhausted; and it has become necessary, in the prosecution of suits under the decree of December 14th, 1880, that additional copies should be printed. Since the said 3d day of January, 1881, however, certain voluminous collateral and immaterial proceedings have been had in the case at the instance of various stockholders and others, which, with the exhibits filed, have increased the record to an enormous bulk, without in any manner affecting the said original and direct proceedings.

If these subsequent collateral matters are to be considered a part of the record, the copying and printing of the same would greatly enlarge the bulk and multiply the costs in the premises; and in any of the numerous suits which your petitioner has brought or may bring against stockholders in the different States, an appeal on either side would necessitate the incurrance of useless costs to a degree amounting to oppression, inasmuch as the said extraneous matter would be wholly immaterial and unnecessary for the prosecution or the defence of such suits. The costs of said litigation in the different States are already very great, and are continually increasing. It is the obvious interest of the stockholders themselves, by whom these costs will ultimately be paid, that the same should be diminished as far as practicable.

The said collateral proceedings embrace the petition of J. J. A. Trotter, a stockholder, tendered to be filed on the 13th of October, 1881: the petition of John E. Hurst and others, filed on the 14th

day of May, 1883; and the petition of Thomas L. Farish and others, filed on the —— day of July, 1883; and the joint and several answers of the Baltimore and Ohio Railroad Company, the Bank of Commerce, W. W. Glenn's adm'r, and others, to the said several petitions (the said several answers having been filed on behalf of said respondents and all other creditors of the defendant company). Also numerous and voluminous exhibits and depositions, filed with the said petitions and with said answers as parts thereof. All of the said collateral proceedings resulted in the decree of July 21st, 1883, authorizing your petitioner, the trustee, within six months from the date thereof, upon the payment to him by any of the subscribers or persons liable on the stock of this company, of twenty-five per cent. of the original amount of subscription with certain interest and costs, to give an acquittance in discharge of such liability—which decree may be found, as entered, on the said 21st day of July, 1883, in the records of this case.

Your petitioner has duly reported to the court from time to time his action under the said decree, as will appear from the files of said record. The said reports are also voluminous, and immaterial in any proceedings against other stockholders.

Your petitioner further shows that on the 11th day of April, 1884, another petition was filed by Thomas J. Jennings, Goode Bryan and Charles B. Purcell, of a character similar to those above mentioned; to which the Baltimore and Ohio Railroad Company, the Bank of Commerce, Glenn's administrator and other creditors, filed a demurrer and a joint and several answer, and exhibits and the depositions of witnesses.

The object of each and all the petitions above named was to obtain a rehearing of the said decree of the 14th day of December, 1880, and to set the same aside.

The record of the court in this case shows that on the 9th day of December, 1884, the said several petitions of Trotter and of Hurst and others, and of Farish and others, were dismissed, and your petitioner was directed to proceed to execute the said decree of December 14th, 1880, as if the said order of July 21st, 1883, had never been entered; and that the matter of the said petition of said Jennings, Bryan and Purcell, having been fully argued and heard, the said petition was, on the 4th day of March, 1885, dismissed with costs.

In addition to the foregoing matters which are collateral and immaterial as aforesaid, various reports have been filed by your petitioner, of his transactions as trustee, and various reports have also been filed by commissioners of this court, auditing said reports, and in reference to the details of the administration of the said trust—which reports are wholly immaterial for the purposes of prosecuting or defending any suit or suits against stockholders, authorized by the said decree of December 14, 1880.

Your petitioner is advised that, for the said purposes, the only additions to the record heretofore printed, which closed with the decree of January 3d, 1881, are copies of the orders and decrees since entered; as they will show all of the subsequent action of the Chancery Court of the city of Richmond, ending with the order of that court, of the 27th day of June, 1884, removing this cause to this court, and all of the subsequent action of this court in this cause to this date.

Your petitioner therefore prays that your Honor will enter an order directing the clerk of this court in making out a copy of so much of the record in this case as may be required by your petitioner for showing his authority to sue the stockholders of the defendant company for the assessment of thirty per cent. of their stock as prescribed by the said decree of December 14, 1880, to omit the matters and things specified in the foregoing petition as immaterial and unnecessary in any litigation in respect to the said assessment.

If it should be deemed advisable to insert any of said petitions of stockholders and the answer and the exhibits and evidence filed, the matter of said last petition, known as the Georgia petition, would seem to be sufficient as being the last and as indicating the character of all, and furnishing the occasion for the only adjudication upon the matter of a rehearing, namely, the late opinion and decree of this court reviewing the original and direct proceedings of the Chancery Court of the city of Richmond, resulting in said decrees of the 14th of December, 1880, and 3d January, 1881, which constitute the authority of your petitioner to collect the said assessment.

In addition to the said petitions, proceedings thereon and reports aforesaid, petitions have been filed by several creditors and others having reference to interests in the fund under the control of the court upon which proceedings also have been had: all of which are entirely extraneous and immaterial as aforesaid, and it is prayed that these also may be omitted as aforesaid.

JOHN GLENN, Trustee,
By counsel.

CARRINGTON & FITZHUGH,
JOHN HOWARD, } p. q.

And at another day, to-wit:

At a Circuit Court of the county of Henrico, continued by adjournment and held for said county, March 25, 1885.

Glenn's adm'r and others
v.
National Express and Transportation Company and others.

This cause came on this day again to be heard on the papers formerly read and the petition of John Glenn, trustee, this day filed, and was argued by counsel; on consideration whereof, the court being of opinion that the prayer of said petition is reasonable and proper and should be granted, doth adjudge, order, and decree that the clerk of this court, in making out a copy of so much of the record in this cause as may be required by John Glenn, trustee, for showing his authority to sue the stockholders of the defendant company, for the assessment of thirty per cent. of their stock as prescribed by the decree of December 14th, 1880, heretofore entered in this cause, may omit therefrom the petition of J. J. A. Trotter; the petition of John E. Hurst and others, and the petition of Thos. L. Farish and others, the answers thereto and exhibits and depositions with said petitions and answers respectively filed; also the reports of John Glenn, trustee, of his action under the decree of July 21st, 1883; also the petition of Jennings, Bryan and Purcell, the demurrer and answer thereto and exhibits therewith, and the depositions of witnesses referring to that petition; also the various reports of said John Glenn, of his transactions as trustee, and the various reports filed by master commissioner of this court, auditing the said reports, and in reference to the details of the administration of the said trust; and also the petitions of creditors and others in reference to interests in the fund under the control of the court, referred to in said petition of John Glenn, trustee, this day filed, and the proceedings had thereon; the court being of opinion, and so deciding, that the several matters and things above specified are immaterial and have no bearing upon the validity of the said decrees of the 14th day of December, 1880, and the 3d day of January, 1881, establishing the right and authority of the said John Glenn, trustee, to collect said assessment of thirty per cent. of the unpaid subscriptions to the capital stock of the defendant company, which decrees still remain in full force as when first entered.

And at another day, to-wit:*

At a Circuit Court of the county of Henrico, continued by adjournment and held for the said county, December 13th, 1884.

Glenn's Administrator's vs. National Express and Transportation Company and others.	In Chancery.

*This decree was inadvertently omitted at its proper place, namely, at p. 210, after the decree of Dec. 9, 1884.

VIRGINIA:

In the Circuit Court of the county of Henrico, December 13th, 1884:

This cause came on this day to be again heard on the papers formerly read and on the report of Commissioner Wm. J. Leake, dated on the 5th day of November, 1884, and filed in the office of this court on November 26th, 1884, which report was made pursuant to decrees of the Chancery Court of the city of Richmond [of which court said Leake is one of the commissioners], rendered on January 22d, 1884, February 9th, 1884, and March 8th 1884, and to which reports no exception had been taken, and on the various accounts marked from No. 1 to No. 8 inclusive, and "Old Trustees' Account," and the various depositions and exhibits returned therewith, and on the reports of John Glenn, trustee, showing a settlement of his accounts from 13th August, 1883, to Jan'y 21st, 1884, and from that date to Octo. 8th, 1884, which accounts have been audited and approved by said Commissioner Leake, pursuant to the decree of Dec. 14th, 1880, and was argued by counsel: *On consideration whereof*, the court doth approve and confirm the said report of Commissioner W. J. Leake of date Nov'r 5th, 1884, and all of the said accounts returned therewith, except so far as may be hereinafter expressly otherwise provided. And the court being of opinion that the fund now under its control, and which has arisen from, and is the fruit of the compromise decree of July 21st, 1883, should be distributed equitably amongst all the creditors of the defendant company, according to the scheme therefor reported by Commissioner Leake, and being also of opinion that the creditors of the defendant company [other than John J. Kelly, as to whom special mention will be hereinafter made,] who are also stockholders therein, and who are still in default in payment of the assessment made by the court upon their shares, a list of whom is filed by Commissioner Leake as account No. 8, should not receive their dividends for the present, and in order to carry out the said equitable distribution of said fund, the court doth adjudge, order and decree that the following persons, or Charles Marshall and John Howard, their counsel of record, have leave to check on the Planters' National Bank of Richmond, on an extract from this decree, for the following sums, on account of their debts, against the National Express & Transportation Company, as reported by Commissioner Leake, that is to say:

First, Debts due officers and employees:

[See account No. 2 with Commissioner Leake's report.]

No.			
	1	Gardner T. Getty for the sum of	$34 98
	2	Arthur Shaff, for	70 84
	3	L. R. Smoot, for	309 01
	4	J. T. M. Barnes, for	137 32
	5	Gen. Joseph E. Johnson (to be checked for by Robt. Stiles, his attorney of record), for	975 29
	6	Richard T. Allison, for	70 01
	7	S. D. Childs, for	29 37
	8	John Biddle, for	19 58
	9	Oscar T. Keeler, for	486 67
	10	M. W. Hutcheson, for	137 10
	11	Charles W. Field, for	143 37
	12	F. E. Marks, for	83 98
	13	R. A. Jeffrey, for	10 96
	14	Floyd McCulloch, for	22 84
	15	S. Downey, for	36 77
	16	S. F. Leps, for	15 86
	17	James DuP. Fenton, for	39 17
	18	S. E. Poor, for	31 33
	19	J. W. Houck, for	15 27
	20	John G. Justice, for	50 92
	21	Thomas K. Davis, for	36 40
	22	D. S. Ryan, for	23 89
	23	C. D. B. Webster, for	32 51
	24	W. H. Glenn, for	29 37
	25	E. Winchester, for	27 16
	26	J. J. Graham, for	31 33
	27	J. L. Hawk, for	18 73
	28	R. C. Kinkead, for	43 39
	29	Sherman Bailey, for	13 70
	30	Earhart Bumans, for	15 66
	31	John Murphy, for	7 96
	32	F. W. Winchester, for	9 79
	33	William Grimes, for	15 66
	34	E. Shaffer, for	19 58
	35	G. H. Swift, for	5 87
	36	H. M. Cottingham, for	229 42
	37	J. H. McDade, for	39 17
	38	F. A. B. Jennings, for	22 19
	39	R. W. Atwell, for	29 37
	40	P. S. Johnson, for	42 43
	41	R. M. Demere, for	37 21
	42	H. C. Grubb, for	51 57
	43	F. Shackelford, for	21 80
	44	A. H. Contes, for	11 75
	45	J. H. Nichols, for	35 49
	46	C. M. Davis, for	2 62

47	W. M. Keblinger, for	37 41
48	W. J. Keblinger, for	39 17
49	J. L. Brode, for	52 55
50	Edwin W. Wade, for	14 75
51	L. H. Fitch, for	14 47
53	D. T. Richards, for	19 58
54	W. S. Walker, for	29 37
55	R. Hendricks, for	97 93
56	M. G. Farrh, for	50 53
57	A. Cudworth, for	29 87
58	S. Wiltbank, for	233 43
59	C. J. Wiltbank, for	111 84
60	Wm. Wyman, for	52 98
61	F. Dougherty, for	49 84
62	Thomas P. Bacon, for	94 35
63	Wm. C. Ford, for	35 29
64	A. T. Lavalette, for	5 48
65	C. C. Thompson, for	23 50
66	David Buest, for	23 50
67	H. D. Basler, for	8 44
68	Benjamin Flood, for	6 88
69	Edward Beans, for	15 01
70	H. Montgomery, for	4 70
71	B. W. Oakman, for	10 00
72	John H. Maxwell, for	3 72
73	James Millman, for	4 12
74	Fred Nagle, for	7 95
75	H. B. & A. Taylor, for	39 17
76	A. A. Laws, for	13 70
77	F. A. Goddard, for	10 94
78	Louis Green, for	31 33
79	Hollingsworth Warfield, for	2,025 82
80	L. Green, for	43 95
81	Rudolph Oehl, for	34 60
82	Daniel Seaton, for	45 04
83	John Wakins, for	8 22
85	W. H. C. Bayly, for	24 48
86	Stephen Cremin, for	12 53
87	George Bishop, for	11 75
89	F. B. Berkeley, for	44 65
90	Milton Ball, for	45 04
91	Henry Vaughan, for	10 00
92	George Bond, for	22 34
93	Andrew O'Meara, for	17 85
94	James Hood, for	9 62
95	W. H. Tibals, for	13 58
96	Edward McGeehan, for	22 65

97	F. Grill, for	7 54
98	Jacob Arnold, for	5 07
99	John Manly, for	9 23
100	Thomas McCullough, for	9 79
101	Thomas Burns, for	9 79
102	A. Boyce, for	10 96
103	F. Craig, for	4 22
104	J. Schleiffer, for	3 11
105	W. F. Anderson, for	6 85
106	George McAllister, for	7 24
107	S. Bishop, for	4 30
108	Martin Clark, for	36 32
109	George Clark, for	24 67
110	J. A. Pierce, for	60 93
111	W. H. Glancote, for	14 20
112	James T. Ball, for	5 87
113	G. C. Taliaferro, for	29 37
114	C. M. Davis, for	28 03
115	C. Yeungling, for	123 37
116	Thos. Dobbins, for	29 37
117	W. H. Gordon, for	4 89
118	R. A. Crawley, for	64 63
119	Edward L. Clark, for	22 02
120	A. N. Stewart, for	47 20
121	Benj. P. Grymes, for	23 50
122	W. L. Keller, for	55 61
123	Geo. M. Walters, for	37 21
124	A. J. Smith, for	47 00
126	Thomas Cook, for	84 02
127	J. L. Brodie (this to be checked for), by Pegram & Stringfellow, his attys, for	53 38
128	George A. Smith (this to be checked for), by Christian & Christian, his attys, for	239 83
129	M. B. Porteaux, for	115 22
130	J. P. McCorkle, for	99 01
131	Philip Stockton, for	178 98
132	A. B. Johnston, for	162 82
133	John J. Kelly, by Robt. Stiles, his counsel, for	940 54
	Making in the aggregate the sum of	$9,744 69

To be checked for by the creditors mentioned in said account No. 1, the dividends of E. W. Anderson, (No. 52, amounting to $19.58), M. C. Y. Barry (No. 84, amounting to $54.54), G. A. Schwartzman (No. 88, amounting to $17;18), and H. Heth (No. 125, amounting to $146.37), being retained under the control of the court until they shall have paid their assessments on their

stock, or shown cause against such payment, making a total of $237.67 thus retained.

And in like manner the following parties shall have leave to check on said Planters National Bank of Richmond for the dividends allowed them on their debts, as set out in the "supplement to account No. 2," as returned by Commissioner Leake, to-wit:

134	C. Raborg, or Charles Marshall, and John Howard, his counsel, for the sum of	110 54
135	B. F. Corr, or the same counsel, for	9 35
136	E. P. Reeve, assignee, or the same counsel, for	45 80
137	Isaac E. H. DeGroff & Co., or the same counsel, for	331 42
138	W. H. Gover, or the same counsel, for	50 88
139	J. R. Braitwaite, or the same counsel, for	229 48
	Making an aggregate of	$777 47

To be checked for by the creditors named in said "supplement to account No. 2."

And the court doth further adjudge, order and decree that the following corporations, through their proper officers, or Charles Marshall and John Howard, their counsel of record, do check on said Planters National Bank of Richmond for the following sums, as the dividends due them on their debts against the defendant company, according to account No. 3, with Commissioner Leake's said report, to-wit:

1	The Baltimore and Ohio Railroad Co., for	16,451 03
2	Bank of Commerce, Baltimore, for	6,600 67
	Making an aggregate of	$23,051 70

To be checked for under said account No. 3, with said report.

And the court doth further adjudge, order and decree that the following corporations, or Charles Marshall and John Howard, their counsel of record, do in like manner check on said bank for the following sums as the dividends due them on their debts against the defendant company, according to account No. 4, with Commissioner Leake's report, to-wit:

1	Philadelphia, Wilmington and Baltimore Railroad Co., for	1,346 08
2	Wilmington and Weldon Railroad Co., for	109 34

3	Northeastern Railroad Co., for	324 42
4	Charlotte, Columbia and Augusta Railroad Co., for	85 33
5	Richmond and Danville Railroad Co., for	226 60
	Making an aggregate of	$2,091 77

To be checked for under said account No. 4, with said report.

And the court being of opinion that the debts mentioned in account No. 1, returned with the said report, should be paid in full, all of said debts being for unpaid expenses of executing this trust, the court doth adjudge, order and decree that the following parties have leave to check on the Planters National Bank, of Richmond, for the following sums, in full of the debts reported as due them in said account No. 1, with Commissioner Leake's report, viz:

1	Page & Maury, for the sum of	$828 00
2 and 3	John J. Kelly (Robert Stiles, his counsel), for	515 24
4	John Blair Hoge, for	1,883 14
5	Burtin N. Harrison, for	250 00

Making an aggregate sum of $3,476 38–100 to be checked for by said creditor named in said account No. 1, with said report.

And the court doth further adjudge, order and decree that the following persons and corporations, or Charles Marshall and John Howard, their counsel, (except in cases where other counsel are expressly named, in which case then such counsel so named) shall have leave to check on said Planters National Bank, of Richmond, on an extract from this decree for the following sums, in payment of the dividends reported due to them by account No. 5. returned with Commissioner Leake's said report, viz:

No.	1	John M. Glenn, adm'r *d. b. n.* of W. W. Glenn, for	$7,458 90
	2	Francis Murray, for use of John R. Terry, for	2,715 25
	3	Henry M. Bash, trustee, for the sum of	16,359 11
	4	Luke H. Miller, for	465 58
	5	Fulton & Walke, for	103 09
	6	Robert Higgins, for	182 21
	7	Geo. McMaster, for	144 13
	8	Pennsylvania Co. for insurance on lives and granting annuities trustee under the will of Sarah V. Syckel, for	249 66
	9	Philadelphia, Wilmington & Baltimore R. R. Company, for	697 74

10	Louis Stix & Co., for	97 99
11	Wilmington & Weldon R. R. Co., for	86 09
12	Richmond, Fredericksburg & P. R. R. Co., for	1,051 65
14	Potomac Ferry Co., for	57 14
15	South Carolina R. R. Co., for	827 73
16	Charlotte, Columbia & Augusta R. R. Co., for	131 15
17	Baltimore Steam Packet Co., for	68 15
18	Orange & Alexandria R. R. Co., for	615 53
19	Franklin Harrison, for	28 16
20	Andrew J. Joyce & Co., for	21 97
21	"National Intelligencer," for	23 92
22	E. R. Cunningham, for	2 47
23	H. P. Gilbert & Co., for	2 33
24	"Publisher of Chronicle," for	50 07
26	J. W. Naini & Bro., for	12 56
27	Thos. Ware and Thos. Kelly, for	6 41
28	Palmer & Sly, for	8 25
29	Jas. S. Tapham, for	5 69
30	R. P. Buford, for	3 93
31	T. Titcomb, for	1 41
32	Henry St. Paul & Co., for	4 85
33	James Couning, for	9 97
34	Edward Shloss, for	44 26
35	Petty & Sawyer, for	123 24
36	"Mobile Daily Tribune," for	6 02
37	"Advertiser & Register," for	36 12
38	Young & Words, for	385 36
39	Sims & Hamilton, for	6 41
40	C. M. McMullan, for	1 08
41	Berger & Hoffman, for	1 68
42	Sperdth & Indeinden, for	2 81
43	J. C. Orr & Co., for	1 17
44	Walters & Knift, for	2 33
45	J. H. Logan & Co., for	0 19
46	Bushfield, Wallace & Co., for	0 21
47	Hamilton & Nagle, for	0 38
48	"Wheeling Intelligencer," for	8 09
49	"Wheeling Register," for	6 79
51	Atlantic and N. C. R. R. Co., for	101 28
53	C. W. Starbuck & Co., for	5 82
54	Fitch & Bro., for	3 30
55	D. McFarland, for	1 94
56	J. W. Newman, for	1 16.
57	E. Raine, for	0 38
58	Brown & Davis, for	3 72
59	Sam'l Blair & Co., for	5 16
60	F. E. Suire & Co., for	2 68

61	C. B. Prather & Co., for	2 08
62	Maguire & Co., for	1 20
63	Andersen & McFarland, for	2 29
64	Wm. Huddart & Co., for	0 58
65	J. B. Shroder, for	0 72
66	H. G. Strobel, for	0 96
67	Western Union Telegraph Co., for	28 91
68	John M. Owen, for	1 64
69	Smith, Hawley & Co., for	6 74
70	J. Black, for	3 21
71	Capatnus Shaffer, for	1 20
72	R. B. Smith, for	7 63
73	Peter Hoffman, for	1 70
75	P. Doherty, for	3 86
76	John Taylor, for	1 88
77	John Dean, for	4 33
78	Hunter & Gammell, for	67 22
79	J. T. Jenkins & Co., for	3 20
80	C. W. & W. R. J. Long & Billups, for	11 45
81	J. J. Ford, for	10 02
82	Ogletree & Grubbs, for	10 16
83	S. S. Herman Livingston, for	12 97
84	J. A. Witherspoon, for	12 91
85	Town of Athens, Ga., for	4 24
86	Mrs. C. A. Johnson, for	60 69
87	E. R. Hodgson & Bro., for	4 43
88	Nicholson, Moss & Hutchinson, for	14 45
89	James Bond, for	26 01
90	Stockton & Co., for	18 66
91	F. Arnold & Co., for	25 19
92	G. A. Mercer, for	4 80
93	Rozwell King, for	19 29
94	Alabama & Florida R. R. Co., for	41 40
95	Mobile & Great Northern R. R. Co., for	30 02
96	Selma & Meridian R. R. Co., for	33 70
97	J. J. Terrell, for	56 06
98	J. B. Rhea, for	7 88
99	Margaret W. Day, for	52 98
100	Richmond & Danville R. R. Co., for	446 01
101	Va. Central R. R. Co., for	379 29
102	Richmond & Petersburg R. R. Co., for	67 69
103	Petersburg R. R. Co., for	78 39
104	Richmond "Dispatch," for	32 57
105	Richmond "Times," for	14 45
106	Richmond "Enquirer," for	23 33
107	Va. Free Press (Gallagher & Co.), for	3 86
108	Winchester "Times," for	2 30

205	Wm. H. Oler, for	3 70
207	Evening Transcript, for	22 33
208	Montgomery, Slade & Co., for	1 14
209	Edward Sinn, for	67
210	P. P. Pendleton, for	20 53
211	D. Claude, for	4 81
212	Hild, Wammell and Mitchell, for	85
213	R. H. Tall, for	74
214	John Nugent, for	14 60
215	A. S. Abell & Co., for	4 18
216	Ammidon, Cranbie & Co., for	3 13
217	Page & Maury (or L. R. Page, their counsel), for	125 87
218	W. D. Miller, for	218 43
	Making an aggregate of	$36,242 35

To be checked for by the creditors mentioned in account No. 5, returned with Com'r Leake's said report.

And the court doth retain the dividends of the following creditors mentioned in said report in account No. 5, who are alleged to be stockholders in default in payment of their assessments until the further order of the court, to-wit: John Farrell (No. 25), $3.78; J. Reynolds (No. 50), amounting to $8.74; J. Taylor (No. 74), amounting to $1.88; Canfield Bro's & Co. (No. 180), $72.00; Geo. W. Webb & Co. (No. 184), $4.81, and John B. Baldwin (No. 218), $354.45—and it being alleged that Wm. J. Hawkin's claims to be the assignee of the claims of the Seaboard and Roanoke R. R. Co. (No. 13) on which the dividend would be $116.52, and of the Raleigh and Gaston R. R. Co. (No. 52), on which the dividend would be $230.32, making for the two $346.84; and it being alleged that said Hawkins is a delinquent shareholder, owing an assessment on ——— shares; the said dividends are also retained on said debts until the further order of the court; and the court decides that the claim of Kelly & Piel (No. 206), should be disallowed, it appearing that the same has been paid and the dividened of $428.25 allowed thereon is retained for future distribution, making a total retained dividend, under account No. 5 aforesaid, of $1,220.75. And the court doth further adjudge, order, and decree that John J. Kelly, late trustee under the deed of Sept. 20th, 1866, in the proceedings mentioned, have leave to file his petition, setting forth his claims for compensation for his services and for repayment of expenses incurred by him in the discharge of his duties as such trustee and in rendering his final accounts, which petition is accordingly now filed and the court will hereafter consider the same, and it is ex-

301 pressly declared that nothing herein contained shall be construed as prejudicing his rights in regard thereto.

And the court doth further adjudge, order, and decree that John Glenn, trustee, out of the moneys now in his hands as such, do deposit at once in the Planters' National Bank of Richmond, to the credit of this cause, the sum of $2,795.43 to meet in part the sums distributed under this decree.

And the court not being prepared at this time to pass upon the question as to the claim of the Commonwealth of Virginia for priority of payment of its claim, mentioned in Commissioner Leake's report aforesaid, the court doth adjudge and decree that this cause be recommitted to Commissioner W. J. Leake (who is hereby appointed a special commissioner for the purpose), who is directed to ascertain and report to the court—

1st. Whether the Commonwealth of Virginia is entitled to any priority of claim for payment of its said debts over the other creditors of the defendant company;

2d. Whether the petitioner, John J. Kelly, is entitled to any additional compensation for his services and expenses in executing the trusts of the deed of September 20, 1866, over and above such amount as has been allowed him under this decree.

All which the said commissioner will report to the court, with any matter specially stated, &c.

A copy. Teste:

GEO. W. CARTER, *Clerk.*

And at another day, to wit:

At a circuit court of the county of Henrico continued, by adjournment, and held for the said county, at the court-house, on Monday, the 15th day of February, 1886.

W. W. GLENN'S ADMINISTRATOR *against* THE NATIONAL EXPRESS AND TRANSPORTATION COMPANY and *als.*	In Chancery.

Upon motion of the complainants it is ordered that this cause be, and it is hereby, referred to Special Commissioner Wm. J. Leake to enquire and report with all convenient speed whether the present call and assessment upon the stockholders will realize a sufficient amount to pay the indebtedness of the company in fulfillment of the trusts of the deed; and, if not, what additional call and assessment will be necessary to that end, including the costs and expenses of collection and of the administration of the fund.

302 And at another day, to wit:

At a circuit court of the county of Henrico continued, by adjournment, and held for the said county, at the court-house, on Tuesday, the 16th day of February, 1886.

W. W. GLENN'S ADMINISTRATOR
against
THE NATIONAL EXPRESS AND TRANSPORTATION COMPANY and *als.* } In Chancery.

It is adjudged, ordered, and decreed that W. J. Leake do check on the Planters' National Bank of Richmond, on the fund therein to the credit of this cause, for the sum of one hundred and seventy-five ($175) dollars in payment of his fees as special commissioner in this cause up to this date.

And at another day, to wit:

At a circuit court of the county of Henrico continued, by adjournment, and held for said county, at the court-house, on Friday, the 19th day of February, 1886.

W. W. GLENN'S ADMINISTRATOR
against
THE NATIONAL EXPRESS AND TRANSPORTATION COMPANY and *als.* } In Chancery.

It is ordered that Charles Marshall and John Howard be, and the same are hereby, authorized each to check on the fund standing to the credit of the court in this cause in the Planters' National Bank of Richmond for the sum of one thousand dollars on account of professional services rendered by them to John Glenn, trustee, in this cause.

And at another day, to wit:

At a circuit court of the county of Henrico continued, by adjournment, and held for the said county, at the court-house, on Saturday, the 27th day of February, 1886.

W. W. GLENN'S ADMINISTRATOR
against
THE NATIONAL EXPRESS AND TRANSPORTATION COMPANY and *als.* } In Chancery.

Upon motion of the executrix of John B. Baldwin, de-
303 ceased, it is ordered that so much of the decree entered in this cause on the 13th day of December, 1884, as retains the sum of $354.45, a dividend allowed upon the claim of the said John B. Baldwin by Commissioner Leake in his report of November, 1884, on the suggestion that the said Baldwin was a stockholder in the defendant company, be, and the same is hereby, rescinded, the court not now passing upon the question whether the said Baldwin was or was not such stockholder, and leave is hereby given to Susan Baldwin, executrix, &c., or Legh R. Page, her counsel, to check upon the fund to the credit of the court in this cause in the Planters' National bank of this city on filing therewith a certified extract frem this decree for the said sum of three hundred and fifty-four $\frac{45}{100}$ dollars, with interest thereon frem the 13th day of December, 1884.

And at another day, to wit:

At a circuit court of the county of Henrico continued, by adjournment, and held for the said county, at the court-house, on Friday, the 26th day of March, 1886.

W. W. GLENN'S ADMINISTRATOR
against
THE NATIONAL EXPRESS AND TRANSPORTATION COMPANY and *als.* } In Chancery.

This day this cause came on to be further heard upon the papers formerly read and upon the report of Special Commissioner Wm. J. Leake, filed in the clerk's office on the 13th day of March, 1886, to which there is no exception, and was argued by counsel. On consideration whereof, it appearing to the court that the debts due by the defendant company as of November 1st, 1884, principal and interest, exceeded the sum of five hundred and eighty thousand dollars ($580,000), and that the returns from the present call of thirty per cent. will probably not exceed two hundred thousand dollars ($200,000), leaving, say, three hundred and eighty thousand dollars, and all interest accumulated since November 1st, 1884, and to accumulate, and accruing costs and expenses still to be paid, the court is of opinion, and doth accordingly order, adjudge, and decree that, in addition to the said call of thirty per cent. it is now necessary and proper to make a call for the residue of fifty per cent. remaining uncalled for and unpaid upon the capital stock of said company, and doth therefore further adjudge, order, and decree that a call and assessment be, and the same is hereby, made upon the capital stock and stockholders of the said National Express and Transportation Company of fifty per centum of the par value of the said stock, being fifty ($50) dollars on each and every share thereof, and that the stockholders of said company and each and
304 every of them and their legal representatives and assigns be, and they are hereby, severally required to pay the several amounts hereby called for and assessed to John Glenn, of the city of Baltimore, in the State of Maryland, substituted trustee in said deed of trust from said company of the 20th day of September, 1866, in the proceedings mentioned, and the said trustee is hereby authorized and directed to collect and receive the said call and assessment, and to take such prompt steps toward that end, by suit or otherwise, and in such jurisdictions as he may be advised, and liberty is hereby reserved to the creditors and to said trustee to move the court for such further order in the premises as may be necessary and proper.

And in respect to the collections to be made under this decree the same directions are given to the said trustee as are contained in the decree of December 14th, 1880, in reference to collections to be made and the proceedings to be had thereunder.

The report of Commissioner William J. Leake, referred to in the foregoing decree, and filed on the 13th day of March, 1886, is in the following words and figures, to wit:

"(*Report.*)

"COMMISSIONER'S OFFICE, *March* 12, 1886.

"W. W. GLENN'S ADMINISTRATOR
against
"THE NATIONAL EXPRESS AND TRANSPORTATION COMPANY and *als.*

"To the circuit court of the county of Henrico:

"The undersigned respectfully reports to the court that on February 16th, 1886, at the instance of John Howard, Esq., counsel for the complainants, and of John Glenn, trustee, he issued notices to all the parties to the above-mentioned case, fixing on this office as the place and February 22d, 1886, as the time for executing the requirements of the order of reference entered in this suit on February 15th, 1886. The said notice, with evidence of service thereof endorsed thereon, will be found returned herewith.

"The said order of reference was in the following words:

"Upon motion of the complainants, it is ordered that this cause be, and it is hereby, referred to Special Commissioner Wm. J. Leake to enquire and report with all convenient speed whether the present call and assessment upon the stockholders will realize a sufficient amount to pay the indebtedness of the company in fulfillment of the trusts of the deed, and if not, what additional call
305 and assessment will be necessary to that end, including the costs of collecting and of the administration of the fund.

"On February 22d, 1886, your commissioner, attending at his office and in the presence of John Howard, Esq., counsel for the complainants, and counsel for John Glenn, trustee, took the deposition of said John Glenn, which is herewith returned.

"The deposition and the special report of John Glenn, trustee, therein mentioned, and the papers previously in the cause, furnish the basis for this report. In response to the said decree of the 15th February, 1886, your commissioner reports that the present call and assessment upon the stockholders will not realize a sufficient sum to pay the indebtedness of the company in fulfillment of the trusts, and that an additional call and assessment will be necessary for that purpose.

"What additional call and assessment will be necessary?

"In order to answer this enquiry the commissioner will refer the court to Commissioner Leake's report of November 5th, 1884, from which it will appear that the debts due by the National Express and Transportation Company up to November 1st, 1884, exceeded ---------- $580,000 00

And it appears that the net returns from the present call of 30 per cent. will probably be ---------- 200,000 00

Leaving, say ---------- $380,000 00

and all the interest to accumulate since the 1st of November, 1884.

"If a call for 30 per cent. will only produce $200,000 net, it is probable, nay, almost certain, that it would take an assessment or

call of 50 per cent., the balance remaining uncalled, to produce $380,000 net, to say nothing of increasing indebtedness from the accumulation of interest and the loss of solvent subscriptions by death, &c.

"Special reference is made to the deposition of John Glenn, hereto annexed.

"Respectfully submitted,

"WM. J. LEAKE,
"*Special Commissioner.*"

"Commissioner's fees for this report, notices, and depositions and examining papers, $15, charged to trustee.

"COMMISSIONER'S OFFICE, *February 22d*, 1886.

"GLENN'S ADMINISTRATOR, &c.,
against
"THE NATIONAL EXPRESS AND TRANSPORTATION COMPANY and *als.*

"The deposition of John Glenn and others, taken before me,
306 Wm. J. Leake, special commissioner of the circuit court of Henrico county, on this 22d February, 1886, at my office, Richmond, Virginia, pursuant to a decree rendered in said cause on the 15th February, 1866, and notice duly given to this date, to be read in evidence in the above-entitled cause.

"Present: John Howard, Esq., of counsel for complainants and of counsel for John Glenn, trustee; John Glenn, in person.

"JOHN GLENN, a witness of lawful age, being first duly sworn, deposes and says as follows:

"1st question by commissioner. Are you the trustee, substituted as such under the decree of December 14th, 1880, in this suit?

"Awswer. I am.

"2d question by same. Please read over the decree of the 15th February, 1866, entered in this suit, and under which the commissioner is now acting, and state to the commissioner—

"1. Whether the present call and assessment upon the stockholders will realize a sufficient amount to pay the indebtedness of the company in fulfillment of the trusts of the deed? and, if not,

"2nd. What additional call and asssessment will be necessary to that end, including the costs and expenses of collecting and of the administration of the fund?

"Answer. I have already read the decree in question, and I am not only satisfied that the present call will not yield sufficient money to liquidate the indebtedness of the company, but if the same obstructions continue to be thrown in the way it is very doubtful whether a call for the fifty per cent. additional, still uncalled for, will liquidate that indebtedness. I would refer the court to my last report, where the condition of affairs is entered into in detail—I mean the condition of affairs showing the difficulties surrounding the execution of this trust, and showing the

causes tending to diminish the returns from any call, no matter what the amount.

"The present call of thirty per cent. has so far yielded about $80,000 net for distribution under the deed. If the exhaustion of this call yields $200,000 net, I shall be very much surprised. In a further call, many of the stockholders' collections from whom make up the amount of the present call, can never again be reached, and there is every reason to believe that as we go on collecting under the present call, still more of those who are obliged to pay will place their affairs in a way to avoid any possibility of reaching them in the future.

"We have had instances of this already. The unpaid indebtedness, as shown by the commissioner's report, now exceeds a
307 half million of dollars, and is increasing daily by the accumulation of interest.

"And further this deponent saith not.

"JOHN GLENN."

"Sworn to and subscribed before me by the said John Glenn, in the city of Richmond, Va., this 22d day of February, 1886.

"WM. J. LEAKE,
"*Com'r in Chancery.*"

"VIRGINIA:

"In the Circuit Court of the County of Henrico, February 15th, 1886.

"GLENN'S ADMINISTRATOR, &C.,
against
NATIONAL EXPRESS AND TRANSPORTATION COMPANY and *als.*

"Upon motion of the complainants, it is ordered that this cause be, and it is hereby, referred to Special Commissioner Wm. J. Leake to inquire and report with all convenient speed whether the present call and assessment upon the stockholders will realize a sufficient amount to pay the indebtedness of the company in fulfillment of the trusts of the deed; and, if not, what additional call and assessment will be necessary to that end, including the costs of collecting and of the administration of the fund.

"A copy.

"Teste: GEORGE W. CARTER, *Clerk.*"

"*Notice.*

"COMMISSIONER'S OFFICE,
"RICHMOND, VA., *February 16th*, 1886.

"The parties to this suit are hereby notified that I have fixed on this office (corner Eleventh and Bank streets) as the place and Monday, February 22d, at 12 o'clock m., as the time for executing the requirements of the above-mentioned decree.

"WM. J. LEAKE,
"*Commissioner.*"

308 "(Endorsed.)

"We acknowledge service of the within notice.

McGUIRE & ELLETT,
JOHN HOWARD,
Attorney and Counsel for the Trustee, John Glenn, and the Creditors whose Claims were Established by Decree of 14th December, 1880.

CHRISTIAN & CHRISTIAN.

"Executed in the city of Richmond, February 17, 1886, by delivering to Joseph R. Anderson, director of the National Express and Transportation Company, a copy of the within, he being a resident of the city of Richmond and the only officer of said company residing in the city of Richmond.

"LEWIS P. WINSTON,
"*Sheriff City Richmond.*"

And at another day, to wit:

At a circuit court of the county of Henrico, continued by adjournment and held for the said county at the court-house on Saturday, the 10th day of April, 1886.

W. W. GLENN'S ADMINISTRATOR *against* THE NATIONAL EXPRESS AND TRANSPORTATION COMPANY and *als.*	In Chancery.

Upon reading the petition of John Glenn, trustee, and Exhibit "A," therewith this day filed, it is ordered that the matter of said petition be referred to Special Commissioner Wm. J. Leake to enquire and report what additional commissions or what specific additional compensation, if any, it is right and proper that the said trustee shall receive for his services in the execution of the trusts of the deed of September 20th, 1866.

The petition and Exhibit "A," referred to in the foregoing order, are in the following words and figures, to wit:

309 (*Petition.*)

"GLENN'S ADMINISTRATOR, &c., *against* THE NATIONAL EXPRESS AND TRANSPORTATION COMPANY *et als.*

"To the Hon. B. R. Wellford, judge of the circuit court of Henrico Co., Va.:

"The petition of trustee, duly appointed in the above case, respectfully shows—

"That notwithstanding the decision of this honorable court on the conclusiveness of the decree passed by the chancery court of the city of Richmond on December 14th, 1880, and notwithstanding that the

said decision has been supported by decisions in five circuit courts of the United States, two State supreme courts, and two separate decisions in the circuit court for the District of Columbia, each step of the trustee is obstructed by every device that can suggest itself to the defendant stockholders or their attorneys. This cause not only involves the execution of the trust in immense and what would otherwise be needless expense, but it makes necessary for the trustee an amount of labor which does not properly belong to a trustee, but without which this trust never could have been executed.

"Your trustee has been obliged not only to visit the different points where cases were instituted for the purpose of giving them personal attention, but after institution has been obliged to revisit these points, many of them remote, again and again in order to secure the bringing of these cases to trial, and he has done this, as promptness is of the greatest importance to the solvent stockholders, who are finally to pay these debts.

"These causes have brought up points little understood by the bar generally, and your trustee has been obliged not only to get up the facts by statement of the accounts, of which there is a very great number, but has been obliged to get up the law, and furnish it in numberless instances.

"Besides this, he has been called upon to state accounts over and over again for stockholders, whose only object has been to obstruct, and when it is considered that there are over one thousand of these stockholders, and one-half of them are directly or indirectly through their attorneys requiring information, your honorable court will understand the labor connected with this trust.

"Besides this, in every case so far, except the Missouri, Illi-
310 nois, California, and Texas cases, your trustee has been obliged to produce witnesses at time of trial to prove the books, to produce the books themselves, and to be present in person as a witness.

"In the Raleigh cases the books were produced, thrice the case being continued.

"In the New Orleans cases the books were produced, and your trustee with his witness were detained for some time for the action of the court.

"In the Charlotte cases your trustee and witnesses were detained a whole week, and your trustee has been informed that the books must be shortly produced at Atlanta, Montgomery, and West Virginia. See exhibit filed herewith marked "Exhibit A."

"It is only necessary to refer to the accounts already filed to show the constant absence which three requirements render necessary.

"Your trustee has endeavored, by producing the books once and showing the accounts, to the attorney and offering to furnish an exact transcript, to prevent the loss of time and expense incurred in this constant production, but the only reply has been that the books must be produced in each case.

"From the experience of the last five years, for five years have elapsed since the rendition of the decree, it is not unreasonable to

believe that more than this time must elapse before this trust can be executed.

"Your trustee respectfully represents that in consideration of the above facts and of the labor, time, and responsibility connected with this trust the compensation allowed by the deed of trust is inadequate and asks that the court will allow him on the collections made and to be made an additional commission of — per cent. for his services or such additional specific compensation as may seem proper to report under the circumstances, and he prays that such other, further, and general relief may be granted to him as to equity may seem meet.

"JOHN GLENN.

"CITY OF RICHMOND, *To wit:*

"This day John Glenn personally appeared before me, a notary public in and for the city of Richmond, Virginia, and made oath that the facts stated in the foregoing petition are true as he verily believes.

"Given under my hand this 5th day of April, 1886.

"WM. J. LEAKE, *N. P.*"

311 "EXHIBIT 'A.'

1880, Dec. 29 and 30, Richmond—In connection with bonds.

1883, July 20, 21, Richmond—To contest petition of Hurst *et als.* to set aside decree. Books produced.

Aug. 18 and 19, Richmond—In connection with petition. Books produced.

Aug. 24 and 25, New York—To procure missing books and examine record regarding stockholders.

Sept. 1 to 24, inclusive, St. Louis, Cincinnati } To meet compromising stockholders and arrange for suits.

Oct. 12, Washington—To arrange for bonds in attachment suit and consult with counsel.

Oct. 15th to Nov. 2, inclusive, Richmond, Raleigh, Charleston, Savannah, Augusta, Atlanta, Montgomery, Mobile, New Orleans, } To arrange with local counsel, and advise as to what suits to bring.

November 12 and 13, Richmond—To consult with court as to employment of counsel.

Dec. 3d, Philadelphia—To advise with local counsel as to stockholders, and to arrange for compromise.

Dec. 12, Washington—In connection with court proceedings, &c.

1884, Jan'y 18th, Washington—In connection with court proceedings, and to consult as to condition of stockholders.

Feb. 26 to M'ch 11, inclusive, Richmond, Raleigh, Atlanta, Montgomery, Mobile, New Orleans, } To advise with local counsel as to condition of stockholders, and as to proposals from opposing counsel.

April 14 to 19, inclusive, St. Louis, Parkersburg, Cincinnati, Chicago, } To advise with local counsel, and investigate the conditions and whereabouts of certain stockholders.

April 14, Richmond—Attorney sent in connection with making new parties to suit.

May 23 to 25, inclusive, Richmond—Court proceedings.

June 13 to 15, inclusive, Richmond—Court proceedings.

June 25 to 28, inclusive, Charlottesville, Lynchburg, Staunton, } In connection with compromises and suits.

312 Aug. 6 to 8, Norfolk—To advise with local counsel.

Oct. 6 to 8, Richmond—In connection with court proceedings.

Oct. 27 to 28, Charlottesville—In connection with suits. Books produced.

Nov. 13 to 15, Richmond—With records.

Nov. 17 to 21, inclusive, Montgomery, Atlanta, } With books.

Dec. 1, Richmond—Attorney to R.

Dec. 3 to 6, Raleigh, N. C.—Suits assigned and postponed. Books produced.

Dec. 10 to 12, Raleigh, N. C.—Suits assigned and postponed. Books produced again.

Dec. 17 to 19, Cincinnati—In attachment suit.

Dec. 22 to 23, Charlottesville—Clerk with books to take depositions.

1885, Jan. 6 to 7, Covington, Va.—Clerk with books.

Jan. 20 to 22, Richmond—With attorney to oppose Georgia petition. Books produced.

Feb. 4 to 5, Richmond—Attorney and clerk with books to oppose Georgia petition.

Feb. 19 to 21, Richmond—Attorney and clerk with books to oppose Georgia petition.

April 2 to 13, New Orleans, Montgomery, Atlanta, } To try cases, consult with counsel, and produce books for examination.

April 27 to 28, Charlottesville—Clerk with books to take depositions.

June 3 to 7, Raleigh—To try suits. Books produced.

June 13, Philadelphia—To see opposing counsel.

July 14 to 20, New York, Boston, } To consult with counsel in suits instituted or to be instituted.

July 22 to 24, Richmond—In connection with Virginia cases.

Aug. 31, Sept. 1st and 2d, Norfolk—To arrange for changing counsel and pressing suits.

Sept. 8, 11, Lexington, Staunton, } Clerk to examine papers of M. G. Harman.

Nov. 4 to 6, Staunton—Clerk with books to take depositions.
Nov. 24 to 26, New York—Clerk with books to take depositions.
Dec. 12 to 19, Charlotte, N. C.—To try cases. Books produced.
1886, Jan. 4, Richmond—For consultation.
Jan. 11, Washington—In connection with attachment suit and other cases, compromise, etc."

And at another day, to wit:

At a circuit court of the county of Henrico, continued by
313 adjournment and held for the said county at the court-house on Tuesday, the 15th day of April, 1886.

W. W. GLENN'S ADMINISTRATOR
against
THE NATIONAL EXPRESS AND TRANSPORTATION COMPANY and *als.* } In Chancery.

This day this cause came on to be further heard upon the papers formerly read and upon the petition of John Glenn, trustee, this day filed and was argued by counsel, on consideration whereof the court, being of opinion that the prayer of said petition is reasonable and proper and should be granted, doth adjudge, order, and decree that the clerk of this court in making out a copy of so much of the record in this cause as may be required by the said John Glenn, trustee, for showing his right and authority to sue the stockholders of the defendant company for the call and assessment of fifty per cent. of their stock made by the decree entered in this cause on the 26th day of March, 1886, may, after inserting the proceedings had up to and including the decree entered in the cause on the 25th of March, 1885, as prescribed in said decree, omit the following matters and things of date subsequent to the said decree of the 25th of March, 1885:

The matter of the injunction restraining the payment of John O. Reid's estate of a certain sum decreed to it on the 13th day of December, 1884; the matter of the petition of Stephen W. Jones, a creditor of said company; the report of the clerk of this court filed on April 4th, 1885, touching the tax on the fund in bank to the credit of the court and cause; the matter of the petition of John Blair Hoge as to compensation for his services as trustee; the matter of the petition of John J. Kelley touching his claim to compensation and reimbursement as trustee; the matter of the petition of James L. Kemper, an alleged stockholder, for a compromise of his liability; the matter of the petition of W. R. McGee, an alleged stockholder, for a compromise of his liability; the several reports and accounts of John Glenn, trustee, of his transactions as trustee; the matter of the petition of Agnes H. M. Taliaferro for a compromise of the liability of the estate of Alexander G. Taliaferro, deceased; the matter of the petition of Robert P. Dodge for a compromise of his liability, and the matter of the petition of John Glenn, trustee, touching the liability of the estate of Joshua H. Evans, deceased, and praying liberty to accept a compromise as to the same; the court being of opinion and so deciding

that the several matters and things above specified are immaterial and irrelevant to the validity of the said decree of the 14th of December, 1880, and the 3d of January, 1881, establishing the right and authority of the said John Glenn, trustee, to collect said
314 assessment of thirty per cent. of the unpaid subscriptions to the capital stock of the defendant company, which decrees remain in full force as when first entered, and that the said several matters and things above specified are also immaterial and irrelevant to and have no bearing upon the validity of the said decree of March 26th, 1886, making an additional call and assessment of fifty per cent. upon the said capital stock and stockholders of said company.

The petition referred — in the foregoing decree is in the following words and figures :

"W. W. GLENN'S ADMINISTRATOR and *als.*
against
THE NATIONAL EXPRESS AND TRANSPORTATION COMPANY and Others.

"The petition of John Glenn, trustee, respectfully states that on the 26th of March, 1885, a decree was entered authorizing the clerk of this court in making out a copy of so much of the record in this cause as might be required by your petitioner for showing his authority to sue the stockholders of the defendant company for the assessment of thirty per cent. of their stock as prescribed by the decree of December 14th, 1880, to omit the matters and things specified in a petition filed by your petitioner as immaterial and unnecessary in any litigation instituted to enforce the payment of said assessment. Your petitioner now states that since the 25th day of March, 1885, certain other voluminous proceedings have been had in the further administration of the trust, which, with the exhibits filed, have considerably increased the bulk of the record without in any manner affecting the original and direct proceedings which resulted in the decree of December 14th, 1880.

"The subsequent matters embrace petitions by new creditors praying permission to prove their debts and proceedings had thereon, accounts and reports filed by your petitioner showing his acts and doings under said decree of December 14th, 1880, reports filed by Master Commissioner Wm. J. Leake respecting the same petitions filed by various stockholders presenting offers of compromise of their liabilities, under the act of Assembly of March 17th, 1884, and the proceedings had thereunder and like matters of administration neither the substance or the details of which have any relevancy either to the said decree of December 14th, 1880, making a call of thirty per cent. upon the capital stock of the company or to the similar decree entered in this cause on the 26th day of March, 1886, making a call of fifty per cent. on said stock, being the remainder then uncalled for and unpaid upon the same.

"Your petitioner further shows that on the 15th day of February, 1886, a decree was entered in this cause directing Special
315 Commissioner Wm. J. Leake to enquire and report with all

convenient speed whether the present call and assessment upon the stockholders will realize a sufficient amount to pay the indebtedness of the company in fulfillment of the trusts of the deed; and, if not, what additional call and assessment will be necessary to that end, including the costs of collecting and of the administration of the funds. After due proceedings had under the said decrees the said commissioner filed his report on the 13th day of March, 1886, and, in accordance with that report, on the said 26th day of March, 1886, the said decree was entered making the additional call of fifty per cent. upon the capital stock of the company as aforesaid.

"Your petitioner further states that in view of the said last decree it is now necessary that such an amendment be made to the record to be used in enforcing the said decree as will show the said special proceedings resulting in the said decree and the said decree itself. But your petitioner is advised that the said above-described proceedings appertaining and incidental to the administration of the trust are wholly immaterial for such purpose, and if copied and made part of the record for the purpose of showing your petitioner's right and authority to sue for and collect the said fifty per cent. required to be paid by the said decree of March 26th, 1886, the same would only uselessly augment the already enormous bulk of the record, and, in case of appeal in any of the numerous suits to be brought in the enforcement of the said decree, would inflict either upon the plaintiff or the defendants a totally unnecessary amount of additional costs in taking the litigation to an appellate court. It is the duty and object of your petitioner to prevent incurrence of unnecessary costs in the premises, and he therefore prays that the court will pass an order directing the clerk of this court (as was done by the said order of the 25th of March, 1885, in reference to similar matters) directing the clerk of this court, in making out a copy of so much of the record in this case as may be required by your petitioner for showing his authority to sue the stockholders of the defendant company for the said call and assessment of fifty per cent. of their stock, as prescribed by the said decree of March 25th, 1886, to omit the matters and things specified in the foregoing petition as immaterial and unnecessary in any litigation in respect to the enforcement of said call and assessment.

"JOHN GLENN, *Trustee.*"

(Pp. 316, 317, and 318 omitted in printing, being index to Exhibit A. See general index.)

319 In the Circuit Court of Henrico County.

W. W. GLENN'S ADMINISTRATOR and Others
vs.
THE NATIONAL EXPRESS AND TRANSPORTATION COMPANY and Others.

STATE OF VIRGINIA, *County of Henrico,* } *To wit:*

I, George W. Carter, clerk of the circuit court of the said county of Henrico, in the State of Virginia, do hereby certify that the foregoing is a full, true, and entire transcript of the record of the above-entitled suit of W. W. Glenn's Administrator and Others *vs.* The National Express and Transportation Company and Others now remaining in my said court, prepared according to the orders of the court passed in the said cause on the 25th day of March, 1885, and on the 15th day of April, 1886.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the court-house, this 5th day of August, 1886, and in the 111th year of the Commonwealth.

Seal Circuit Court of the County of Henrico, Va.

GEO. W. CARTER, *Clerk.*

STATE OF VIRGINIA, *County of Henrico,* } *To wit:*

I, Beverley R. Wellford, Jr., only judge of the circuit court of the county of Henrico, in the State of Virginia, do certify that George W. Carter, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same the clerk of the said court, and that his said attestation is in due form.

Given under my hand and seal this 5th day of August, 1886.

B. R. WELLFORD, JR., *Judge.* [SEAL.]

320 And the plaintiff thereupon offered and gave in evidence a stipulation signed by counsel on both sides in the above-entitled cause, marked Exhibit "D" for identification (the signatures to which said stipulation were admitted to be genuine), and the same was by the court admitted in evidence without any objection on the part of the defendant, and was read in evidence, and the same is in the words and figures following, to wit:

EXHIBIT "D."

Stipulation. Filed Nov. 28, 1890.

In the Supreme Court of the District of Columbia.

JOHN GLENN, Trustee, &c., Plaintiff,
vs.
J. CARTER MARBURY, Defendant. } At Law. No. 29475.

It is hereby admitted, stipulated, and agreed between the counsel

for the plaintiff and defendant, J. Carter Marbury, as follows: That the said defendant became an original stockholder in the
321 National Express and Transportation Company and was an original subscriber therein for the one hundred shares of stock mentioned in the declaration, for which stock he received the certificate and has paid twenty per cent. only on his said subscription; and, further, that the record, certified by George W. Carter, clerk of the circuit court of Henrico county, Virginia, on the 5th day of August, 1886, for identification marked Exhibit "A," of the proceedings in the case of Glenn's Administrator, &c., *versus* The National Express and Transportation Company *et al.*, begun in the chancery court of the city of Richmond and transferred to the circuit court of Henrico county, Virginia, and now pending in said circuit court, may be read in evidence as a sufficient transcript of the record of the proceedings in said cause; and, further, that either side may read in evidence from said record any document appearing therein which might be proved by a duly certified copy of such document. Any document which may be so read in evidence from said record shall have the same legal effect as a duly certified copy of such document would be entitled to if offered in evidence
322 and be subject to like exceptions.

Nov. 24th, 1890.

HENRY WISE GARNETT,
Att'y for Pl'ft.

J. J. JOHNSON,
Attorney for Defendant.

And thereupon the plaintiff, under and in pursuance of and in accordance with the said stipulation of counsel (Exhibit "D"), at this stage of the cause again offered and gave in evidence, as a whole, the record, certified by George W. Carter, clerk of the circuit court of Henrico county, Virginia, on the 5th day of August, 1886, for identification marked Exhibit "A," of the proceedings in the case of Glenn's Administrator, &c., *vs.* The National Express and Transportation Company *et al.*, begun in the chancery court of the city of Richmond and transferred to the circuit court of Henrico county, Virginia, and now pending in said circuit court, and the same was by the court admitted in evidence, without objection on the part of the defendant, and was read in evidence as a sufficient transcript of the record of the proceedings in said cause, and
323 the same (Exhibit "A") is in the words and figures hereinbefore set forth and given in full above.

And thereupon the plaintiff, under and in pursuance of and in accordance with the said stipulation of counsel (Exhibit "D"), offered to read in evidence from said record (Exhibit "A") and was by the court allowed to read in evidence from said record (Exhibit "A"), without any objection on the part of the defendant, and did read in evidence from said record (Exhibit "A") the following documents appearing therein, namely, the "act of incorporation and amendment" entitled "An act to amend and reenact an act to incorporate the Southern Express Company, passed

March 22nd, 1861, and to incorporate the National Express and Transportation Company," passed December 12, 1865; also another act entitled "An act to amend the 8th section of an act entitled An act to amend and re-enact an act to incorporate the Southern Express Company, passed March 22, 1861, and to incorporate the National Express and Transportation Company, passed Decem-
324 ber 12, 1865," passed December 18, 1865; also the deed of assignment or deed of trust, dated September 20th, A. D. 1866, from the National Express and Transportation Company, a body politic and corporate under the laws of the State of Virginia, to John Blair Hoge, John J. Kelly, and C. Oliver O'Donnell; which said documents so read in evidence from said record (Exhibit "A") are and each of them respectively is in the words and figures in which they are and each of them respectively is set forth in said record (Exhibit "A") which is given above.

And thereupon the plaintiff, also in addition, offered and gave in evidence a separate and distinct certified copy, duly authenticated, of the same deed of trust, and the same was by the court admitted in evidence, without any objection on the part of the defendant, and was read in evidence, and the said deed is in the words and figures as it appears in the said record Exhibit "A" and is not here repeated.

And the plaintiff then also offered and gave in evidence a separate and distinct certified copy of the act or acts of incorporation and
325 the amendment to the same of said company, duly authenticated, and the same was by the court admitted in evidence, without any objection on the part of the defendant, and was read in evidence, and the said acts are in the words and figures as they appear in the said record Exhibit "A" and are not here repeated.

And thereupon the plaintiff also offered and gave in evidence a certified copy of a paper showing a compliance or acceptance of the said charter by the said company, marked Exhibit "C" for identification, and the same was by the court admitted in evidence, without any objection on the part of the defendant, and was read in evidence, and the same is in the words and figures following, to wit:

EXHIBIT C.

COMMONWEALTH OF VIRGINIA:

I, Fitzhugh Lee, governor of the Commonwealth of Virginia, certify that H. W. Flournoy, whose name is signed to the within certificate bearing date the 25th day of November, 1887, is, and was at the time of signing, secretary of the Commonwealth and
326 keeper of the seals of Virginia, duly elected and qualified; that he is authorized by the laws of this State to make and sign such certificate, and that to all of his official acts full faith, credit, and authority are due and ought to be given.

In testimony whereof I have hereunto set my hand as governor and caused the great seal of the State to be affixed. Done at the city

of Richmond this 28th day of November, A. D. 1887, and in the 112th year of the Commonwealth.

[SEAL.] FITZHUGH LEE.

By the governor:

H. W. FLOURNOY,
Secretary of the Commonwealth and Keeper of the Seals.

"COMMONWEALTH OF VIRGINIA,
"OFFICE OF SECRETARY OF THE COMMONWEALTH,
"EXECUTIVE CHAMBERS, *Dec.* 16, 1865.

"The governor this day received an official notification from C. W. Purcell, president (*pro tem.*) of the National Express and Transportation Company, stating that one-third of the capital stock
327 of the company had been subscribed, and that one hundred thousand dollars had been paid up.

"This information is given in obedience to the provisions of the 9th sec. of the act to amend and re-enact 'An act to incorporate the Southern Express Company, passed Dec. 12th, '65.'

"Notification filed this day with the executive documents.

F. H. PIERPOINT."

I, H. W. Flournoy, secretary of the Commonwealth of Virginia, do hereby certify that the above is a true copy of an entry on the executive journal of December 16th, 1865.

[SEAL.] Given under my hand and seal this 25th day of November, A. D. 1887.

H. W. FLOURNOY,
Secretary of Commonwealth.

And thereupon the plaintiff's counsel, stating that while the court would take judicial cognizance of the laws of the State of Vir-
328 ginia, he desired to call particular attention to certain of said laws, offered the same in evidence as the same are set forth and contained in the duly authorized publications of said laws, which the plaintiff then and there produced in court, a list of which and reference to which said laws, so particularly called to the attention of the court and offered in evidence from said authorized publications thereof, is marked Exhibit "F" for identification; and the same are not herein set forth, because the defendant then and there agreed that the plaintiff might, at the trial of this case in this court or in the general term or in the Supreme Court of the United States, refer to said publications of said laws and read therefrom the sections or any of them on said list, Exhibit "F," with like effect as if the same had been herein fully set forth, and the court, without any objection on the part of the defendant, admitted in evidence said specified laws of the State of Virginia, and they were read in evidence. Said Exhibit "F" is in the words and figures following, to wit:

329 EXHIBIT F.

Code of Virginia of 1860, ch. 56, §§ 1 & 30.
Code of Virginia of 1873, ch. 56, §§ 1 & 30.
Code of Virginia of 1860, ch. 57, §§ 1, 2, 3, 12, 13, 14, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, & 28.
Code of Virginia of 1873, ch. 57, §§ 1, 2, 3, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, & 30.
Code of Virginia of 1860, ch. 157, § 16.
Acts of assembly of Virginia, 1872–'3, ch. 395, § 9, pp. 383 & 384.
Acts of assembly of Virginia, 1872–'3, ch. 396, § 5, p. 384.
Code of Virginia of 1860, ch. 158, § 5.
Acts of assembly of Virginia, 1872–'3, ch. 395, § 9, pp. 383 & 384.
Constitution of Virginia, article 6, §§ 1, 24, 25, & 26, as per Code of Virginia of 1860, pp. 51 & 54.
Constitution of Virginia, article 6, §§ 1, 13, & 26, Code of Virginia of 1873, pp. 84, 87, & 89.
Code of Virginia of 1873, ch. 154, § 7.
Code of Virginia of 1873, ch. 155, §§ 1, 2, 4, 5, 6.
Code of Virginia of 1860, ch. 167, §§ 1 & 2.
Code of Virginia of 1860, ch. 163, §§ 1 & 2.
Code of Virginia of 1873, ch. 163, §§ 1 & 2.
Code of Virginia of 1860, ch. 169, § 1.
Code of Virginia of 1873, ch. 165, § 1.
330 Code of Virginia of 1860, ch. 170, §§ 2, 5, 6, 7, 11, & 12.
Code of Virginia of 1873, ch. 166, §§ 2, 5, 6, 7, 11, & 12.
Acts of assembly of Virginia of 1874 (act of April 15, '74), pp. 224 & 225.
Acts of assembly of Virginia of 1874–'5 (act of March 31, '75), p. 423.

And thereupon the plaintiff rested.

And, the plaintiff having rested, the defendant, to maintain the issues on his part joined, offered in evidence a certified and authenticated copy of the record of a case in the United States circuit court for the eastern district of Virginia, marked Exhibit "G" for identification; to the admitting of which in evidence the plaintiff then and there duly objected; but the court held the same competent and admissible in evidence and overruled the plaintiff's objections and admitted the same (Exhibit "G") in evidence and allowed the same to be read in evidence; and the same is in the words and
331 figures following, to wit:

331½ EXHIBIT "Y." Filed Nov. 28, 1890.

United States Circuit Court, Eastern District of Virginia.

Transcript of Record.

JOSIAH REYNOLDS *et al.*
against
THE NATIONAL EXPRESS AND TRANSPORTATION COMPANY *et als.* } No. 8. In Equity.

* * * * * * *

332 In the Circuit Court of the United States for the Eastern District of Virginia.

JOSIAH REYNOLDS
vs.
THE NATIONAL EXPRESS AND TRANSPORTATION COMPANY *et als.* } In Equity.

Be it remembered that heretofore, to wit, on the 8th day of August, A. D. 1866, came the complainant and filed in the clerk's office of the United States circuit court for the district of Virginia, at Norfolk, in said district, his bill of complaint against said defendant company and Joseph E. Johnston, the president, and Thomas Branch, Hamilton G. Fant, Michael G. Harman, John Echols, J. J. Kelly, C. R. Mason, W. J. Hawkins, and R. H. Maury, directors thereof, and Benjamin Ficklen, the superintendent thereof, and which said bill was endorsed as follows:

Mr. Clerk of the circuit court of the United States for district of Virginia, file this bill and issue subpœna as prayed. H. H. Wells, solicitor for compl't."

333 Said bill is in the words and figures following, to wit:

To the judges of the circuit court of the United States for the fourth circuit, district of Virginia, sitting in equity:

Josiah Reynolds, a citizen and resident of the State of Maryland, brings this his bill against the National Express and Transportation Company, a corporation chartered by the legislature of the State — Virginia and having its principal office and seat of its business in said State, and Joseph E. Johnston, the president, and Thomas Branch, Hamilton G. Fant, Michael G. Harman, John Echols, J. J. Kelley, C. R. Mason, W. J. Hawkins, and R. H. Maury, directors thereof, and Benjamin Ficklin, the superintendent thereof.

And thereupon he says that he is the owner and holder of fifty shares of the capital stock of said corporation, and sues in behalf of himself and all the stockholders of said corporation who shall come in and contribute to the expense of this suit.

1. That the business of said corporation is the transport-
334 ing, forwarding, and carrying property, money, and valuables known as express matter, and freight, to and from various parts of the United States.

2. That said business was commenced on the 1st day of October, 1865, or thereabouts, and prior to the granting of its charter, and was carried on, in fact, without any charter, though your orator is informed and believes that it was declared and pretended at the commencement of said business and organization of said company that its business was so commenced and said company organized under an act of said legislature incorporating said company, passed in 1861; and your orator charges that the business of said company, as conducted under the pretense as aforesaid and up to the organization of the said company, under its charter granted in December, 1865, was conducted in the most reckless and extravagant manner and the money subscribed to the capital stock wasted and misapplied, and that this waste and misapplication of said money has been by said company charged to and its burthen transferred upon the business of the company as organized under said charter
335 of December, 1865, making your orator's stock of greatly less value than it would have been had only the business, properly and legally done under said charter of 1865, been supported by and its burthens imposed upon it; and your orator charges that the pretense as aforesaid of claiming to organize under the act of 1861, incorporating the Southern Express Company, the said company (under the name of the National Express and Transportation Company) and the declaring that the said company was organized under an existing charter and in a proper and legal manner was fraudulent and illegal.

3. And your orator states and charges that said pretended and fraudulently organized company was fused into and incorporated with the company organized or conducted after the said charter of 1865 was granted and the burthens of its business transferred to it, and, in fact, no distinction made in the business of the pretended, illegal, and fraudulent organization and that of the company, as made under said charter of 1865, and he charges that this
336 was and is a fraud upon the rights of your orator and the stockholders of said company who became so after said charter of 1865 was had, and a violation of the duty said company owes your orator and the other of said stockholders.

4. And your orator believes and so states and charges that the business of said company has been and is now conducted in the most reckless, extravagant, and improvident manner, and the money subscribed by your orator and the other stockholders has been and is now being wasted and misapplied in conducting said business, but chiefly in ways and for purposes illegal and beyond the powers of said company under said charter and in fraud of your orator's rights and in violation of the duty said company owes your orator and the other stockholders therein:

First. In conducting and paying the expenses of litigation under the name of one Benjamin Ficklin for purposes not connected with the business of said company under said charter.

Secondly. In paying to certain railroad and steamboat com-
337 panies large sums of money for transporting freight thereon beyond the regular and usual charges for transporting the

same kind and quantity of freight for others, this being done by running for said company a special car or cars of capacity far beyond the requirements of said National Express Company, and in paying by way of bonus for the privilege of doing an express business on said railroads and steamboats.

Third. By paying large sums of money by way of illegal and usurious interest or as a bonus for its use under other names by paying for the name and credit of sundry persons as endorsers or securities for said company upon notes, bonds, or drafts.

Fourth. By paying large and extravagant sums for the services or information of persons supposed to be of use to the company in various ways, or to have influence beneficial thereto of some sort, either direct or indirect.

Fifth. By making agreements or contracts to pay sums of
338 money or to give stock or other advantage to certain persons for services to be rendered by them not directly connected with its business.

Sixth. By giving the stock of said company to sundry persons without any actual subscription and payment therefor.

Seventh. In making unnecessary and extravagant improvements on property leased or rented.

5. And your orator states and charges that said company and the said president and directors thereof have made a contract or agreement with a certain Benjamin Ficklin, the general superintendent of said company, by which said company agrees to give extraordinary and illegal advantages and power to said Ficklin, both as to the property and management of the business of said company and his interest therein and the emoluments, pay, or advantage to be given him; that this agreement is conditional or contingent and was made by said president and directors without authority, and has been kept secret and concealed, so that your orator is
339 unable to give the particulars thereof without the discovery sought to be had by the interrogatories made in this bill.

6. And your orator charges that said National Express and Transportation Company is insolvent and unable to meet its liabilities, and is only kept in operation by the payment of large and usurious interest or bonus for money or by the use of the names and credit of sundry persons who are paid in some way for endorsements or credit; that its expenses largely exceed its receipts; that suits for a large amount in which attachments have been issued have been instituted against said company in the State of New York and elsewhere, and your orator's stock is being daily depreciated and his money wasted and squandered by this irregular, illegal, and improvident manner of conducting the business of said company.

7. And your orator further states and charges that the books and accounts of said company have been improperly and falsely kept, and your orator is and the other stockholders are misled and
340 deceived thereby, and the true condition of said company concealed and misrepresented to them.

8. And your orator further states and charges that the president and directors of said company have advertised the stock held by

your orator and the majority of the stock of said company held by himself and other of the stockholders therein for sale at public auction, in fraud of their rights and in violation of the duty they owe to your orator and others — the said stockholders, and he is informed and believes that said stock has been so advertised twice in the newspapers of the city of Richmond, and he is informed and believes that it is the purpose of said president and directors to sell his said stock at public auction unless restrained *for* so doing by this honorable court.

9. And your orator charges that the stock of said company has been given or granted to divers persons without payment of money or otherwise being made therefor, and that some of the stock
341 of said company, though in precisely the same situation as that owned by your orator and some of that held by persons who have not paid for the same at all, has been by said president and board of directors excepted, excluded, or promised to be excepted or excluded from said sale.

And your orator is remediless in the premises save in a court of equity, and said actings and doings of said company thus fraudulently perpetuated are working and will continue to work irreparable damage and injury to him and to the other stockholders of said company.

To the end, therefore, that said company and said president, directors, and superintendent thereof may, if they can, show why your orator should not have the relief hereby prayed and that said company may, under its corporate seal, and said Joseph E. Johnson, the president, and said Thomas Branch, Hamilton G. Fant, Michael G. Harman, J. Echols, J. J. Kelley, C. R. Mason, W. J. Hawkins, and R. H. Maury, directors thereof, and said Benjamin Ficklin, the said general superintendent, may, upon their several and re-
342 spective corporal oaths and according to the utmost of their several and respective remembrance, information, and belief, full, true, and direct and perfect answers make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are respectively required to answer, so that your orator may have a full and perfect discovery and disclosure of the condition of the affairs of said company and of said actings and doings, and that said company and said president, directors, and superintendent may be enjoined and restrained from further carrying on or perpetrating said illegal and fraudulent actings and doings, and that he may have such other and further relief as the case may require—

May it please your honor to grant unto your orator writs of subpœna against said company and said Joseph E. Johnson, the president, and said T. Branch, H. G. Fant, M. G. Harman, J. Echols, J. J. Kelley, C. R. Mason, W. J. Hawkins, and R. H. Maury, the directors thereof, and said Benjamin Ficklin, commanding them
343 to be and appear in this honorable court some certain day to be therein named to answer the premises and the interrogatories propounded in the note at the end of this bill and therein numbered.

And that a writ of injunction issue enjoining, restraining, and prohibiting said company and said Joseph E. Johnston, president; T. Branch, H. G. Fant, M. G. Harman, J. Echols, J. J. Kelley, C. R. Mason, W. J. Hawkins, and R. H. Maury, directors, and Benjamin Ficklin, superintendent, their agents, servants, and employés, from further conducting said business in the illegal and improvident manner hereinbefore set forth in the following particulars:

1st. That they, their servants, agents, attorneys, and counsel, be restrained from conducting or in any way intermed-ling with litigation now in progress by said Benjamin Fincklin against the Virginia Central, the Orange and Alexandria, the Virginia and Tennessee, and the Petersburg and Weldon railroads, and from expending the money of said company in paying fees to counsel or costs of court in said cases.

344 2nd. That they be restrained from pledging, binding, or involving said company or its servants or agents on its behalf or by its authority as principal or surety in any injunction or other bond given or to be given in said suits or in any other manner.

3rd. That said express company and its said president and directors, their servants, agents, and employees, be enjoined and restrained from paying to any railroad or steamboat owner or company the money of said company except for actual service performed at the usual and regular charges therefor, and from employing, running, or hireing any car or cars upon any railroad and paying therefor as if loaded to their capacity unless the same be required and in fact employed to their full capacity for the carriage of the freight and the express matter in the custody of the said express company, and from making or carrying out any contract, agreement, or understanding with any railroad or steamboat company whereby the money of said express company is paid or agreed to be paid for any service or privileges not required in and by the immediate
345 wants of said express company for transportation of said express matter or freight.

4th. And that said company and its said president and directors be enjoined and restrained from selling the stock of your orator and other stockholders of said company, and that all and every agreement or contract made by said company or its said president, directors, or superintendent and every bond given by them or by their authority or on their behalf in said suits or growing out of the same in any way be declared void and be delivered up to be cancelled.

And that a receiver be appointed by this honorable court to take possession of the property and effects, books of account, and papers of said company, and that the said property and effects may be sold and disposed of and any money due said company collected by said receiver; that an account may be taken of its business under the order of this honorable court, and its debt and liabilities paid and the balance distributed to your orator and the other stockholders after such payment is made.

And that your orator may have such other and further
346 relief as his case may require.

The defendants The National Express and Transportation Company and Joseph E. Johnston, the president, and T. Branch, H. G. Fant, M. G. Harman, J. Echols, J. J. Kelley, C. R. Mason, W. J. Hawkins, and R. H. Maury, the directors thereof, are required to answer the interrogatories respectively 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22, and the defendant Benjamin Ficklin, general superintendent, is required to answer interrogatories numbered respectively 6, 7, 8, 9, 11, 12, 15, 16, 20, and 21.

Interrogatories.

1st. Whether the National Express and Transportation Company was not organized and its business commenced and carried on until the 12th day of December, 1865, without a charter, in fact, though it was represented and pretended that said organization was made and said business carried on under a charter granted to the Southern Express Company in 1861 by the legislature of Virginia. State whether any distinction or difference, and what, was made in the business and organization of said company before the 12th of Decem-
347 ber, 1865, and after. Give details and answer explicitly.

2nd. Whether said company issued a printed circular and distributed the same and solicited subscriptions to its stock by its means, in which it was stated that persons subscribing to its stock would not be required to pay more than five per cent. of the amount subscribed. File with answer to this interrogatory a copy of this circular.

3rd. Give the names and residence of the persons who originally subscribed for the stock of said company, and the amounts subscribed by them respectively, and the amount paid by them and each of them upon making such subscription, and state in regard to each the representations and promises made in order to induce such subscription.

4th. State fully and in detail the amount or number of shares of said stock given or granted to persons without an actual subscription or payment of money being made at the time of subscribing therefor and the consideration or motive inducing such gift or grant.

348 5th. State the amount or number of shares of said stock given or granted to any of the officers or employés of said company at any time and the names and residence and grade of such officer or employee of said company to whom said stock was given or granted, and the consideration or motive for such gift or grant.

6th. State fully what amounts or sums of money have been paid by said company and the name and residence of the persons to whom paid for services of any kind rendered to said company since its organization, the services for which it was paid, and in all cases whether the person to whom paid was in the actual service of the company or not and the grade, title, or employment of such person in said company.

7th. State fully and in detail the sums of money paid or agreed to be paid to any railroad or steamboat company for transportation.

Specify each such company to which money has been paid for transportation or agreed to be paid since the organization of the company and the service rendered for such payments. Set out fully
349 any contracts made with any such company, whether reduced to writing or not.

8th. State fully and in detail the contract or agreement under and by which Benjamin Ficklin, the present general superintendent of the said company, took charge of the business and affairs of said company; what amount of money or stock was to be given or granted to him or subscribed for by him; what he has done in compliance with his agreement; upon what contingencies or conditions such money or stock was to be given or granted to him or subscribed for by him; whether such contingencies or conditions have arisen or been complied with on the part of said Ficklin or said company or are yet to arise or be complied with.

9th. State fully and in detail how many and what suits have been instituted against said company since its organization by any person or company; the amount sued for and the nature of the claim made by such suit; how many and what judgments are outstanding and unpaid.

10th. State what amount of money or stock of said com-
350 pany was paid or given or agreed to be paid or given to the firm of Reid and Company, to whom paid or given, and how much, if any, is still due, and what said Reid and Company gave or did in return for such payment or gift. State fully the contract made with Reid & Co. and what was done in consequence of such contract.

11th. State fully and in detail the outstanding obligations of said company or any of its officers or agents on its account or behalf, whether on *upon* account or contract, note, bond, bill of exchange, or draft, due or to become due and payable, and the amount, date of making, and due date of each; whether any and what persons have endorsed the paper of or become surety in any way for said company, and especially whether any and which of its officers, agents, or employees have endorsed the paper of said company or in any way become security for its obligations or contracts and the consideration or motive for becoming so bound.

12th. State fully and in detail what amount of interest has been paid by said company for its organization for the loan or use
351 of money or credit, the name and residence of the persons to whom interest or bonus has been paid for the use of money or credit, by the term credit being understood the use of the name of such persons as makers, endorsers, or sureties of any kind for said company.

13th. State fully the amount and kind of property owned or possessed by said company. Specify the amount paid for each item and its present value.

14th. State fully the rent of each of the offices, depots, warehouses, buildings, or rooms of any kind rented or occupied by the company, the amount expended in fitting up, repairing, or altering the same, where situated and the term of renting or lease, and the names and

residence of the owner or owners of such offices, warehouses, buildings, or rooms.

15th. State fully what losses the said company has made in transporting merchandise, money, or property of any kind; whether such losses have been paid or not; if not paid, the reason of refusing to pay. Give name, residence, and amount and kind of property claimed by each claimant and the time of such loss.

352 16th. State fully and in detail the *the* present financial condition of said company and the losses or gains made by conducting its business since its organization. Give the items of each loss or gain and the aggregate thereof.

17th. State the number of shares of the stock of said company regarded as delinquent and which were regarded by said company as subject to be sold under the advertisements in the Richmond papers made by said company. File copies of the advertisements of the sale of such stock and gave the name and residence of each stockholder thereof and the amount of stock held by each and the reasons why the sales did not take place as advertised. State what notice of said intended sale, if any, other than said advertisements was given to each or any of such stockholders and whether any protests or threats of injunction were made by them, or any and which of them, in order to stop said sales. State whether any promises or exception or exclusion from said intended sales

353 of the stock of any and which of said subscribers or stockholders were made and the reason or motive for such promise of exception and exclusion. File copies of any letters, notices, protests, papers, or writings of any kind made by any of such stockholders in regard to said sales, and state any oral complaints, threats, or notices of said stockholders in regard thereto.

18th. State the names, residence, and grade of each and all of the officers, agents, and employees of said company, the amounts paid or agreed to be paid to each respectively for the services they render said company. State whether on the organization of said company and since it has not been promised and agreed by said company and understood by its subscribers and stockholders and made known to the public that one leading object in establishing said company was to give employment to the officers and soldiers of the two armies of the United States and the so-called Confederate States, disbanded by the close of the late rebellion, and was not such promise and agreement made to such subscribers at the time of sub-

354 scription and held out as inducement to them to make subscription to its stock. State how many of such officers and soldiers have been employed by said company since its organization and how many are now so employed. Give the name, residence, and grade in said armies of each such officer or soldier so employed, distinguishing between the armies in which they served, and give the amounts paid or agreed to be paid to each and the grade or employment of each in the service of said company.

19th. State fully what amounts were paid and to whom paid for conducting the business of said company before the legislature of Virginia at its late session of 1865 and 1866. Give the name of each

person to whom money or stock was paid or given for such services, to whom of the members of said legislature was the stock of said company given, sold, or offered and the amounts so given, sold, or offered during or before its said session. State fully the name and residence of each and also the names and residence of each
355 or any of the members of said legislature who were during the session or now are stockholders in said company.

20th. State fully what fees or compensation were paid or agreed to be paid in stock of said company or money to any attorneys or counsel for advice or conducting any litigation for the benefit or supposed benefit of said company either in its own name or that of any of its stockholders, officers, agents, employés, or other person. State the name and residence of each of said attorneys or counsel and the amounts paid to each and the services for which it was paid. State also the amount of cash paid in such litigation and to whom paid and for what.

21st. State whether said company or any of its officers or agents on its behalf have become bound as principals or securities upon or to any injunction bond or otherwise in consequence of such litigation, and whether said company has made any and what agreement to indemnify and save harmless any and which of its stockholders, officers, or agents or any other person from loss or
356 damage in consequence of being so bound as principal or security or upon any injunction bond or otherwise. File copies of any written agreement made and give the substance of any oral agreements made for such purpose.

22nd. State fully each and all of the transfers made of the stock of said company on its books down to this time, what charges have been made in the form or substance of the certificates of its stock, and the name- and residence of the present stockholders therein.

And as in duty bound your orator will ever pray, &c.

H. H. WELLS,
Of Counsel & Solicitor for Complainant.

Sworn to before me — Josiah Reynolds, compl't, this 6th day of August, 1866.

Witness my hand and seal this 6th day of August, 1866.

[SEAL.] ISAAC BROOKS, JR.,
U. S. Commissioner for Dist. of Maryland.

THE UNITED STATES OF AMERICA, *District of Maryland,* } *To wit:*

357 I, James W. Chew, clerk of the circuit court of the United States for the fourth circuit in and for the Maryland district, do hereby certify that Isaac Brooks, Jun., Esquire, before whom the foregoing affidavit was taken, was at the time of taking the same a commissioner duly appointed by the said circuit court pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," and to all his acts as such full faith and credit is and ought to be given as well in courts of justice as thereout.

In testimony whereof I have hereto subscribed my name and affixed the seal of the said circuit court this sixth day of August, A. D. 1866.

JAMES W. CHEW,
[SEAL.] *Clerk Circuit Court.*

358 And on the same day, to wit, on the 8th day of August, A. D. 1886, the following order was filed in this cause:

On filing bill in this case the clerk will issue subpœna as prayed.
JOHN C. UNDERWOOD,
Dist. Judge.

And on the same day, to wit, on the 8th day of August, A. D. 1866, there issued from the clerk's office of the circuit court of the United States for the district of Virginia a subpœna in chancery directed to the above-named defendants, which subpœna, together with the marshal's return thereon, is as follows, to wit:

Subpœ. in Chancery.

UNITED STATES OF AMERICA, }
District of Virginia, } *ss:*

The United States of America to the National Express and Transportation Company and Joseph E. Johnston, the president, and Thomas Branch, Hamilton G. Fant, Michael G. Harman,
359 John Echols, J. J. Kelley, C. R. Mason, W. J. Hawkins, and R. H. Maury, directors, and Benjamin Ficklin, superintendent, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the district of Virginia, at the court-room in the custom-house, in the city of Richmond in the said district, on the first Monday in the month of October next, to answer the bill of complaint of Josiah Reynolds, this day filed in the clerk's office of said court, in the city of Norfolk, then and there to receive and abide by such judgment and decree as shall then or thereafter be made upon pain of judgment being pronounced against you by default.

To the marshal of the district of Virginia to execute.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Norfolk aforesaid, this 8th day of August, in the year of our Lord one thousand eight hundred and sixty-six.

[Seal of U. S. Circuit Court.]

360 W. H. BARRY, *Clerk,*
P'r J. P. HODGES, *Dep.*

MEMORANDUM.—The above-named defendants are hereby notified that unless they enter their appearance in the clerk's office of said court on or before the day to which the above writ is returnable the

complaint will be taken against them as confessed and a decree entered accordingly.

WM. H. BARRY, *Clerk*,
Per J. P. HODGES, *Dep.*

Marshal's Return.

RICHMOND, VA., *August 13th*, 1866.

Executed as within commanded on Hamilton G. Fant by leaving copy at place of business, on R. H. Maury by leaving copy at office, on Thomas Branch by leaving copy at place of business, on Joseph E. Johnston by leaving copy at place of business, on Michael
361 G. Harman by leaving copy at place of business, — John Echols by leaving copy at place of business, on J. J. Kelley by leaving copy at place of business, on C. R. Mason by leaving copy at place of business, on W. J. Hawkins by leaving copy at place of business, on Benjamin Ficklin by leaving copy at place of business.

JOHN UNDERWOOD,
U. S. Marshal,
Per JAMES N. CROFT, *Dep.*

And at another day, to wit, on the 23d day of August, A. D. 1866, the following notices were filed in the papers in this cause. Said notices, together with the marshal's return on each, are as follows:

To C. R. Mason, one of the directors of the National Express and Transportation Company:

You are hereby notified that I have filed a bill in the circuit court of the United States for the district of Virginia against the National Express and Transportation Company and you, as one of its directors, and have left at the office of said company in
362 the city of Richmond a copy of said bill, and that on the 16th day of August, 1866, I shall move for an injunction as therein prayed before the judge of said court, at his chambers in the post-office building, in the town of Alexandria.

(Signed) JOSIAH REYNOLDS.

Marshal's Return.

I executed this noted on Wednesday, the 15th day of August, 1866, at 6 o'clock p. m., on Clairbourne R. Mason, by leaving at his residence, in the town of Staunton, with Miss Fannie Lankford, a white person over 16 years of age and a member of his family, a copy of the same. I explained the purport of it to her, with the request that she would hand the same to Mr. Mason on his return, he being absent from home (there being no other white person found at his residence).

GEORGE HARLAN, *Deputy*,
For SAMUEL PAUL,
Sheriff of Augusta Co.

363 To Michael G. Harman, one of the directors of the National Express and Transportation Company:

You are hereby notified that I have filed a bill in the circuit court of the United States for the district of Virginia against the National Express and Transportation Company and you, as one of its directors, and have left at the office of said company in the city of Richmond a copy of said bill, and that on the 16th day of August, 1866, I shall move for an injunction as therein prayed before the judge of said court, at his chambers in the post-office building, in the town of Alexandria.

(Signed) JOSIAH REYNOLDS.

Marshal's Return.

I executed this notice on Wednesday, the 15th day of August, 1866, at 6½ o'clock p. m., by posting a copy of the same at the front door of the dwelling-house of Michael G. Harman, in Staunton, he being absent from home and there being no white persons or
364 members of his family over sixteen years at his place of residence.

GEORGE HARLAN, *Deputy*,
For SAMUEL PAUL,
Sheriff of Augusta Co.

To John Echols, one of the directors of the National Express and Transportation Company:

You are hereby notified that I have filed a bill in the circuit court of the United States for the district of Virginia against the National Express and Transportation Company and you, as one of its directors, and have left at the office of said company in the city of Richmond a copy of said bill, and that on the 16th day of August I shall move for an injunction as therein prayed before the judge of said court, at his chambers, in the post-office building, in the town of Alexandria.

(Signed) JOSIAH REYNOLDS.

365 *Marshal's Return.*

I executed this notice on Wednesday, the 15th day of August, 1866, at 5½ o'clock p. m., by leaving a copy of the same at the law office (his place of business) of John Echols with Henderson M. Bell, his law partner, a white person over 16 years of age. I explained the purport of it to him, and requested that he would hand the same to him on his return, he being absent from home.

GEORGE HARLAN, *Deputy*,
For SAMUEL PAUL,
Sh'ff of Augusta Co.

And on the same day, to wit, on the 23d day of August, A. D. 1866, the separate answer of John J. Kelly, one of the above-named

defendants, was filed in the papers of this cause. Said answer, together with the exhibits filed with and referred to therein, is as follows:

Answer of John J. Kelly.

Circuit Court of the United States for the Fourth Circuit and District of Virginia, *set:*

The separate answer of John J. Kelly, defendant, to a bill of
366 complaint exhibited in the said court against The National Express and Transportation Company, this respondent, and other defendants by a certain Josiah Reynolds.

This respondent, saving the benefit of all just exceptions to the bill of complaint, for answer thereto says—

This respondent is made a defendant to the bill as one of the directors of the National Express and Transportation Company, and at the time the said bill was prepared he held that position and also that of vice-president of the said company. About the time said bill was filed, but before respondent has heard of any purpose to institute this proceeding, he was appointed general superintendent of the said company in the place of Benjamin F. Ficklin, the former general superintendent, who, on the 9th day of August, 1866, resigned his office, and on the same day this respondent resigned his place of director and vice-president. It is perhaps proper that this respondent shall say that on or about the
367 first day of February, 1866, he was appointed general auditor of the said company and a short time thereafter was appointed, in addition, a superintendent of division at Baltimore, and that he continued to act in both of those capacities until his election as vice-president in June, 1866.

In all of these relations to the business of the said National Express and Transportation Company respondent has had the best possible opportunities to become familiar with the history of the company and with all of its important and material transactions, and he believes that he knows as much about its affairs as any one connected with the company.

This respondent, proceeding to answer the bill of the complainant, further says—

It is true that complainant is the owner or at least that he appears on the books of the National Express and Transportation Company as the owner of fifty shares of the capital stock of said company, having acquired it by transfer upon said books
368 on the 26th day of July, 1866, hardly a fortnight before the filing of his bill in this cause. The nominal par amount of this stock is five thousand dollars, of which the sum of seven hundred and fifty dollars had been paid up before the transfer to complainant, being fifteen per cent. of the par amount, and all that up to the filing of this bill had been required from the holder of said stock. It is not true, therefore, that this stock was, at the time of the transfer to complainant, in arrear or default or that it was

liable to forfeiture or sale for any such default, nor is it true that said stock at any time since the said transfer has been ordered to be sold for that or any other reason, the wrongs recounted by complainant as done to him in that behalf being wholly imaginary.

It is true that the National Express and Transportation Company is a corporation chartered by the legislature of Virginia for the conduct of the business of express forwarding. At the time the
369 stock was originally subscribed the organization was made under the charter of the Southern Express Company, passed in 1861; but it was at the time understood, agreed, and expected that an amendment of the charter should be applied for from the legislature then about to assemble, and such a charter was applied for and obtained in December, 1865. From the first organization, in October, 1865, the business was conducted in regular succession to the present time by the same parties and for the same stockholders, and there was never any propriety in making any separation in the accounts or the business. The stock held by the complainant was subscribed for by the several parties under whom he holds it in October, 1865; and, if there was, as he charges, any injustice done to late subscribers by charging the losses arising from early mismanagement upon their stock, the complainant, as one of the early stockholders, is benefited instead of being injured by the fact. The truth is, however, that all of the stock of the company was subscribed before the amendment of the charter in Dec'r, 1865, and that all the stockholders justly occupy the same position.
370 There may, possibly, be some small exceptions to this general fact, but they are very inconsiderable.

As to the charge of reckless and extravagant management of the affairs of the company in its early history, respondent can only say that he has no doubt that mistakes were made, errors committed, and losses sustained in consequence of the entire want of experience of those engaged in the conduct of the business, but he has no idea nor any reason to believe that there was any purpose entertained but an earnest wish and desire to promote the interests of the company and to establish its business.

There is, then, no foundation whatever for the allegation that any fraud has been committed upon complainant or upon any one else by the circumstances attending the early organization and working of the company; and if there had been it would be a remarkable circumstance that after the original holders of the stock and those familiar with all the facts had waived all exception and
371 objection on that account and had gone on to pay up fully the requisitions upon the stock it should be left to complainant, who has bought in under such circumstances, to complain of matters which he cannot pretend had any influence upon his conduct in purchasing the stock now held by him.

It is not true that the business of the said company has been or is now conducted in a reckless, extravagant, or improvident manner, or that the money subscribed by the stockholders or arising from the business of the company has been wasted or misapplied either in the conduct of the business or in any ways or for purposes

illegal or beyond the powers of the company under its charter or in fraud of the rights of complainant or of any one else or in violation of any duty of the company to complainant or to any other person. On the contrary, this respondent is able to state distinctly and as of his personal knowledge that while, as has been already stated, the early history of the business was attended by mis-
372 takes arising from want of experience since the first of March, 1866, the business of the company has been conducted with an amount of care and skill and economy and energy which will compare favorably with any similar business wherever or by whomsoever managed.

It is not true that the money of the company has been wasted or misapplied in conducting and paying the expenses of litigation for purposes not connected with the business of said company under its charter. The litigation referred to as conducted in the name of Benjamin F. Ficklin is directly in furtherance of the proper business of the company, its object and purpose being to open the railroad lines in the State of Virginia to the business of all the express companies, including the National Express and Transportation Company, upon fair and equal terms. The effect of said litigation already has been to enable said company to carry its business over all the railroads of Virginia from which it has been excluded by contracts *given* exclusive privileges to the Adams Express Com-
373 pany. The advantage thus secured is so great and so vital to the interest of the company that respondent has no hesitation in expressing the opinion that the expenses attending said litigation and which it is the purpose of the National Express and Transportation Company to pay will constitute as judicious an outlay of money as any that has been made in the business of the company.

It is true that in the conduct of the business of the company it has been found necessary in some cases to submit to exactions from railroad companies in the shape of minimum freights required to be paid for transportation, whether so much should be actually earned or not, and that thereby an unjust increase of expense has been thrown upon the business of the company in some of the leading and vital lines of communication. It has, however, been and is now the constant aim of the company to obtain upon all the lines over which its business is conducted the very best and cheapest terms that can be had; and, as the business progresses and increases, better terms and more favorable arrangements are
374 found practicable. How this inability to control the terms required by the railroads can be supposed to constitute an offense on the part of the company or of its officers this respondent is wholly at a loss to understand. Much progress toward removing these obstacles has been made by the litigation already referred to in the name of Benjamin F. Ficklin. But as complainant disapproves of the means of redress, respondent is driven to the supposition that he prefers stopping the business of the company altogether.

It is not true that the company has paid large sums of money by

way of illegal and usurious interest. On the contrary, all of the loans and other financial operations of the company have been made and conducted at the usual and legal rates of interest at the places where the transactions occurred. Nor is it true that the company has ever paid any bonus for the use of money under any names or for the name or credit of any person as endorser or security for the company in any form.

375 Respondent does not know what the complainant intends by the charge "that large and extravagant sums have been paid for the services or information of persons supposed to be of use to the company in various ways or to have influence beneficial thereto of some sort or other, direct or indirect." It may be true that at the outset of the business, and for the want of experience, contracts for service were made at prices or upon salaries much too high for the value of the service to be rendered. Such a contract with a superintendent in the city of New York has recently been compromised by the company upon favorable terms. It may be that too much was paid to the Reid Express Co. for its contracts, property, and good will. Respondent thinks there was, but that matter is now the subject of negotiation on the part of the company, and it is hoped that the mistake committed may to a large extent be rectified. The contract with Benjamin F. Ficklin was much complained of by some of the stockholders, but if it was ob-

376 jectionable, as respondent thinks it was in some respects, the difficulty has been removed by the entire rescission and abrogation of the whole contract upon terms restoring each party to its original position and giving to Ficklin for his services nothing but his salary at the very inadequate rate of $2,500 a year.

Respondent knows of nothing else to which complainant can refer, and he deems it proper to say that, so far as his knowledge or information extends, while too much may have been paid for service or influence, there has been no payment for any but honest service or legitimate influence, having or believed to have a fair and proper tendency to promote the just and honest interests of the company. Nor has there ever been any payment for service or influence to any one not directly and avowedly employed in and about the known business of the company.

It is not true that any agreement or contract has been made or recognized by the company, so far as this respondent knows

377 or believes, to pay any sum of money or to give stock or other advantage to any one for services to be rendered not directly connected with its business. Nor does this respondent believe that, if any such contract has been made by any officer of the company, it will be ratified or executed by the company.

It is not true that any stock of the company has been given to any one without actual subscription and payment therefor upon terms common to all the stockholders. There have been contracts to pay stock for services or for property in the cases already referred to, but there has in no instance been any donation of stock.

It is not true that the company has made any extravagant or unnecessary improvements on property leased or rented; on the con-

trary, the uniform policy and practice of the company on that subject has been one of rigid economy, confining all such improvements to the actual working necessities of the business.

As to the contract between the company and Benjamin F. Ficklin, referred to in the bill, this respondent deems it only
378 necessary to say that about the first day of March, 1866, the company made with said Ficklin a contract, evidenced by a correspondence spread upon the record of the directors, a copy of which is herewith exhibited as part of this answer, marked (No. 1). This contract gave rise to some complaint and dissatisfaction in the company, and on the 20th day of June, 1866, it was modified by writing between the parties, of which a copy is herewith exhibited, as part of this answer, marked (No. 2). This modification failing to remove the objections and difficulties growing out of the original contract, an agreement was made in writing between the parties on the 9th day of August, 1866, whereby the whole contract was annulled and rescinded. See a copy, herewith exhibited as part of this answer, marked (No. 3).

Respondent presumes that the objections so much urged against this Ficklin contract will all be answered and satisfied by its entire abrogation, and he deems it unnecessary now to enter into any discussion of the circumstances and motives which, in the opinion of the directors, justified the making, the altering, and the final rescission of the contract.

379 It is not true, however, that this contract with Ficklin, in any of its stages, was kept secret or concealed; on the contrary, it was a matter of much public discussion and notoriety—too much so, as respondent always thought and believed. Nor is it true that any part of the business of the company has at any time been kept secret or concealed from any stockholder of the company who chose to inquire about it. So far from it, respondent has always known it to be the desire of the directors and officers of the company to see the stockholders of the company take a lively interest in making such inquiries and examinations.

It is not true that the National Express and Transportation Company is insolvent, or that it is unable to pay its liabilities, and is only kept in operation by the payment of usurious interest and the hire of endorsements and credit.

380 It has been the policy of the company to call upon its stockholders for as little money as possible for the establishment and conduct of its business, and this policy has, as respondent thinks, been carried too far, leading to the necessity of making loans from time to time to meet the necessities of the company. This has, no doubt, suggested to some persons hostile to the success of the company that if the collection of contributions upon stock could be hindered by injunctions or other litigation or delayed by shaking the confidence of the stockholders in the success of the enterprise, the company might be prostrated in its business and credit and thus be removed out of the way of richer and more powerful rivals. The attempt, however, must fail. A company with solvent and paying stockholders, responsible to the extent of

near five millions of dollars, of which not more than half a million has yet been paid in, cannot in any just sense be called insolvent, and respondent can assure all who feel an interest in the matter that the remedies which the law has placed in the hands of the company to enforce collections from reluctant stockholders are ample for the purpose, and that they will be resorted
381 to and enforced to the full extent that may be found necessary to place the credit and business of the company upon such a footing as to defy the assaults of all its enemies within and without.

It is true that thus far the expenses of the company have exceeded its receipts. Its business is in process of extension, with a view to its full and successful establishment over a very large territory. The receipts thus far have been fully as large as the most sanguine could have reasonably anticipated, and the condition and prospects of the business are, on the whole, satisfactory to the directors and officers and to such of the stockholders as have taken the trouble to examine into the matter.

It is true that the company has been sued, in the city of New York, in four cases. Of these, two are upon claims, the justice of which the company denies and which are in process of litigation. One of the other cases was for about $1,000, which was arranged before any judgment was obtained. The fourth is an attach-
382 ment brought by a stockholder to recover back what he has paid on his stock, a claim which has about the same foundation with that of complainant in this case and about the same prospect of success. No other suits have been instituted against the company so far as respondent knows.

If the stock of complainant has been and is being depreciated in value, respondent knows of nothing that has so much tended to that result as the institution of this suit and the notoriety which has been industriously and purposely given to it.

It is not true that the books and accounts of the company have been improperly or falsely kept or that complainant or any other stockholder has been or can be misled and deceived thereby and the true condition of the company concealed and misrepresented. On the contrary, respondent asserts that the books and accounts of the company are as well and as fairly kept as any set of books he ever saw in any business, and that they show plainly and in
383 detail the whole business of the company from the beginning, so that every one competent to examine any system of accounts cannot fail to understand them.

When the fact is remembered that this complainant has not been a stockholder of the company more than a fortnight before he filed his bill, and when it is known in addition, as respondent asserts to be true, that complainant never was at the office of the company so far as respondent ever heard, and that he never inquired of respondent or of any officer of the company as to the condition of the business or asked to see any book or paper relating to it, it must be agreed that this charge against the officers of the company exhibits a reckless disregard of the rights, the character, and the feelings of

others which goes far to discredit all of the sweeping charges made by complainant in the bill, and as to each of which he speaks with the same boldness and confidence which marks this charge about the books.

As has already been stated, it is not true that the stock of
384 the complainant has been advertised for sale by the company. There was a sale ordered and advertised of the stock of delinquent stockholders, but the directors at the meeting held before the filing of this bill rescinded the order and abandoned the purpose of making the sale, so that there is now no order or authority for any such sale. What, then, becomes of the elaborately gotten up charge of partiality to be practiced by the directors to the prejudice of complainant and in behalf of supposed favorites? The idea and the charge had never any other foundation than the mere imagination of complainant.

Respondent, having thus answered the charges contained in the body of the bill, will proceed, as he is advised, to respond to the several interrogatories propounded by complainant, especially so far as they may not have been already answered.

The 1st interrogatory has been fully answered.

Respondent has no knowledge of any such circular as mentioned
385 in the 2d interrogatory. He thinks it probable, from what he has heard, that there was a hope and expectation on the part of many stockholders that not more than five per cent. would be required to start the business, but he is very certain there could never have been any authorized engagement to limit the liability of the stockholders to that amount of contribution.

Respondent is unable to answer the 3d interrogatory without the expenditure of much time and labor in the examination of the books and papers of the company, and he is advised that no such answer is required by a just regard to the frame of this bill or the relief sought.

The 4th and 5th interrogatories have been already answered.

An answer to the 6th question would involve the overhauling of the entire business of the company from its beginning, and respondent is advised that no such answer is required by the proper reading of the bill.

The same remark applies to the 7th interrogatory.

The 8th question has been fully answered, and so has the 9th.
386 In answer to the 10th interrogatory respondent can only say, upon information and belief, that Reed received $15,000.00 in money, and was to receive $90,000.00 in full-paid stock of the company. This contract is in dispute between him and the company, and the payment of the stock is resisted, as respondent has been informed.

The 11th question cannot be answered without an amount of labor such as to forbid the attempt without a special order of the court allowing full time; and, moreover, respondent submits that while complainant as a stockholder is entitled to all the information sought in this and in the succeeding interrogatories, he has no right, under pretense of litigating the rights asserted by him here,

to compel an exposure upon the records of this court of all the affairs and business of the company in such detail. The books of the company are at all times open to the inspection of complainant or of any other stockholder, and respondent submits that he
387 ought to be required to seek such information there rather than by a "fishing bill," such as he has filed here.

Respondent will, therefore, unless specially required by the court, make no further answer to any of said interrogatories, except to say that so far as he knows or has any reason to believe or suspect there has never been any attempt on the part of this company or of any of its officers to offer to any member of the legislature or to any other person any bribe or other unlawful or improper inducement to help or favor the company in any manner whatever.

As to the remedy asked, respondent submits that this court has no power to grant a receiver or to enforce a dissolution of the company or a distribution of its assets, and that as to all of the other relief sought complainant, if in anywise aggrieved, has a full and complete remedy by appeal to the directors and to the stockholders of the company, who within the limits of the charter have full control of the affairs, business, and property of the company, and
388 respondent is advised that it is a conclusive answer to any prayer for relief in equity on the part of a stockholder to show that what he asks may well be granted by the stockholders in general meeting.

In conclusion, respondent feels bound to call attention again to the remarkable circumstances attending the purchase of stock by complainant and the bringing of this suit, and to state, as the only explanation that has occurred to respondent, that he has been informed that the complainant was for many years engaged as a carpenter in the employment of the Adams Express Company, and that he probably is acting in this matter more in the interest of that rival company than for any interest he has in the National Express and Transportation Company.

Without there is anything requiring further answer, respondent, denying all fraud, prays to be hence dismissed with costs, &c.

JOHN J. KELLY.

STATE OF VIRGINIA, *County of Alexandria,* } *sct:*

389 John J. Kelly this day made oath before me, a notary public in and for said county, that the within answer is true to the best of his knowledge and belief.

Given under my hand this 17th of August, 1866.

ROBT I. SMITH, *Not. Pub.*

EXHIBIT (No. 1), Filed with Foregoing Answer.

Extract from the proceedings of board of directors of the Nat'l Express & Trans. Co. at a meeting held in Richmond, Va., M'ch 2d, 1866.

* * * * * * *

The committee, Messrs. Harman, Hawkins, & Echols, appointed to confer with Mr. B. F. Ficklin, reported the following proposition from that gentleman:

RICHMOND, *M'ch 1st*, 1866.

Com'ttee Nat'l Exp. Co., Richmond:

I propose to subscribe for five million dollars stock of your company, provided I be made general superintendent of company
390 at a salary of twenty-five hundred dollars per annum; and as such superintendent I shall have entire control of the active operations of the company, appoint and remove the officers and employés, and establishing, changing, or discontinuing routes or lines according to my judgment, the president and directors being expected to make such financial arrangements as will enable me to carry out my plans. I propose to place my stock in the hands of a trustee for ten (10) years, and that it shall be held and voted as a unit for that time, the said trustee to be named by me and approved by the president and directors.

Yours truly,

(Signed) B. F. FICKLIN.

And your committee further report that Mr. Ficklin agrees to pay twenty thousand dollars in cash and give his notes for eighty thousand dollars ($80,000.00) at sixty days from date and the balance to be paid as required.

(Signed) M. G. HARMAN,
JOHN ECHOLS,
W. J. HAWKINS,
Committee.

391 On motion of Mr. Harman, the proposition of Mr. Ficklin was unanimously accepted.

Official.

J. V. H. ALLEN, *Sec't'y.*

EXHIBIT (No. 2), Filed with Answer of Kelly, Def't.

Extract from the proceedings of board of directors of National Express & Transportation Company at an adjourned meeting held in Baltimore June 20th, 1866.

* * * * * * *

The committee on business, appointed 19th inst., made the following report:

The committee appointed to consider and report upon the best

means of making available the requisitions upon the stock of the company and the proper adjustment of the stock of Col. B. F. Ficklin reported in writing the following plan, viz:

1st. That Col. Ficklin pay or make available to the uses of the company a sum which, with what has already been paid, shall
392 amount to the sum of one hundred thousand dollars ($100,000), and that his stock be reduced to an amount upon which the one *thousand* thousand dollars ($100,000) will represent (15) fifteen per cent. paid in.

2nd. That the requisition of fifteen per cent. upon the other stockholders of the company be pressed to collection in money or in negotiable paper such as will answer the purposes of the company.

3rd. That Col. Ficklin be allowed the privilege at any time within three years from the first day of July, 1866, to increase his stock in the company to an amount not exceeding in the aggregate the sum of five million ($5,000,000) dollars, counted upon the present basis, upon paying up such sums as may have been required of and paid by other stockholders, with interest until payment.

4th. That if before the expiration of the three years the company shall deem it advisable to put any additional stock, not part of the $5,000,000 above mentioned, upon the market, the option shall be allowed to Col. Ficklin to take such stock on the terms stated
393 as part of the amount allowed to him as aforesaid.

5th. That if the reduction of the stock of the company hereafter recommended shall be made, the stock of Col. Ficklin and that which he has the privilege of taking shall be reduced in the same ratio and shall be dealt with in all respects as the other stock of the company.

6th. That these provisions be taken in lieu of the contract between the company and Col. Ficklin, except as to the amount of his salary, which so long as he remains in office shall be paid him as fixed by said contract.

7th. The committee also recommend that the entire stock of the company be reduced to twenty (20) per cent. of its present nominal amount, and that any stockholder upon paying up said twenty (20) per cent. shall receive a certificate of the proper amount of full-paid stock not subject to further calls or requisitions.

Which plan having been maturely considered by the board in conference with Col. Ficklin, it is ordered that the same may
394 be approved and adopted, and that upon its acceptance in writing by Col. Ficklin it shall constitute a contract in lieu of that heretofore existing between him and the company.

* * * * * * *

I hereby certify that the original, approved and accepted in writing by B. F. Ficklin, and of which the foregoing is a copy, is in the possession of the company.

J. V. H. ALLEN, *Sec't'y.*

EXHIBIT (No. 3), Filed with Answer of Def't Kelly.

Copy.

Maj. B. F. Ficklin.

DEAR SIR: We are authorized by the board of directors of the National Express and Transportation Company, in response to your communication of the 7th inst., to submit for your acceptance the proposition hereto appended and to request of you a reply at
395 your earliest convenience.

Your ob'd't serv'ts,

(Signed) C. R. MASON,
H. W. SHEFFEY,
Committee.

Baltimore, Aug't 8, '66.

Proposition.

Terms of separation and settlement proposed by the National Express & Trans. Company to B. F. Ficklin Aug't 8th, 1866.

1st. To annul the contract and surrender all securities and claims on account of it where held by the company and to protect Ficklin against all such securities and claims in the hands of others whenever the holders thereof without notice for that purpose on the part of said Ficklin shall demand settlement or payment of the same.

2nd. To refund to Ficklin in negotiable notes of the company at eight and twelve months all money paid in by him, with interest, deducting all credits to which the company may be entitled on settlement.

396 3rd. To pay to W. W. Glenn in negotiable notes of the company at three, four, and five months all money due from the company, with interest, and to protect him in all endorsements and other liabilities which he may have incurred for the company whenever the parties entitled to or holding the same without notice for that purpose on the part of said Glenn shall demand settlement or payment thereof.

4th. To accept the resignation of Ficklin, which he has expressed a wish to tender, and to pay up his salary at the rate of twenty-five hundred dollars per year, as agreed upon, with an allowance for expenses of one hundred dollars a month, subject to deduction for any sums heretofore drawn on account of salary or expenses.

BALTIMORE, *Aug.* 9, '66.

So far as I am concerned I accept the within proposition. I have no interest in or control over the claim of Mr. Glenn against the company, but he has authorized me to submit the accompanying statement of the terms upon which he is willing to settle
397 with the company, and which I believe are substantially the same as those proposed herein.

(Signed) B. F. FICKLIN.

And on the same day, to wit, on the 23d day of August, 1866, the separate answer of The National Express and Transportation Company, one of the above-named defendants, was filed in the papers of this cause, and is as follows, viz:

Answer of Defendant Company.

Circuit Court of the United States for the Fourth Circuit and District of Virginia, *sct:*

The separate answer of The National Express and Transportation Company to a bill of complaint exhibited in said court against this respondent and other defendants by a certain Josiah Reynolds.

This respondent, saving the benefit of all proper exceptions to the bill of the complainant, for answer thereto saith:

It being the expressed purpose of complainant in making
398 the officers of the National Express and Transportation Company defendants in this suit to obtain from their answers upon their personal knowledge as to the matters set forth in the bill, respondent begs leave to refer to and adopt the answer filed in this case by John J. Kelly, the general superintendent of the company, as giving upon his personal knowledge as much and as accurate information in regard to the subjects of which he speaks as can be furnished by any other person. Respondent asks the benefit of said answer to all intents and purposes as if the same were herein inserted and repeated, and, having thus fully answered, prays to be hence dismissed with costs, &c.

NATIONAL EXPRESS AND TRANSPORTATION COMPANY,
By JOHN B. BALDWIN, *Counsel.*

STATE OF VIRGINIA, *Alexandria County,* } *sct:*

J. V. H. Allen this day came before me, a notary public in and for said county, and made oath that he is the treasurer of the
399 National Express and Transportation Company, and is also the secretary of the said company and of the board of directors thereof; that in these capacities he has been connected with the business of the company from near the first organization thereof, and has had many opportunities to become familiar with the history and business of the company, and especially with the subjects referred to in the answer of said company hereto annexed and in that of John J. Kelly, the general superintendent, thereby adopted, and that upon a careful examination of the bill of the complainant, Josiah Reynolds, and of the said answers he is satisfied that the said answers are true and correct.

Most of the matters therein stated he knows to be true, and the rest he is satisfied are also true.

J. V. H. ALLEN.

Given under my hand this 17th day of August, 1866.

ROBERT I. SMITH, *Not. Pub.*

And on the same day, to wit, on the 23rd day of August, 1866, an order for injunction issued by the circuit court of the United
400 States for the district of Virginia was filed in the papers of this cause, which is as follows, viz:

Order for Injunction.

The Circuit Court of the United States for the Fourth Circuit and District of Virginia.

JOSIAH REYNOLDS, Complainant, *vs.* THE NATIONAL EXPRESS & TRANSPORTATION COMpany, Joseph E. Johnston, the President; Thomas Branch, Hamilton G. Fant, Michael G. Harman, John Echols, J. J. Kelly, C. R. Mason, W. J. Hawkins, & R. H. Maury, Directors Thereof, and Benjamin Ficklin, Superintendent, Defendants.	In Chancery.

On reading the bill of complaint in this cause and the answers filed therein and after argument of counsel for complainant and defendants, it appearing to the satisfaction of the court that the complainant is entitled to the relief prayed for in his said bill, on motion of H. H. Wells, solicitor for the complainant, it is ordered
401 that an injunction do issue in this court restraining the said defendants from collecting or taking any proceedings to collect or enforce from the complainant the payment of moneys for or on account of his stock in said company or assignments or calls thereon, either by sales of stock or otherwise, and from making any assessments upon the complainant in respect to or on account of his said stock, and also enjoining and restraining the said company, its directors, agents, and servants, from pleading, using, or applying the property, funds, effects, and credits of the said company to or for any purposes or objects other than the regular and legitimate express and transportation business for which the said company was organized, and from carrying out or fulfilling the agreement with Benjamin Ficklin mentioned in said bill or any similar agreement with any other person, and from selling any of the shares of said stock held or owned by the complainant until the further order of this court.

JOHN C. UNDERWOOD,
District Judge.

Alexandria, Aug. 18, 1866.

402 And on another day, to wit, on the 31st day of August, 1866, exceptions were filed in the papers of this cause to the answer of John J. Kelly, one of the defendants in this cause, as follows:

Exceptions to Answer of John J. Kelly, Def't.

The Circuit Court of the United States for the Fourth Circuit and District of Virginia. In Chancery.

JOSIAH REYNOLDS, Complainant,
vs.
THE NATIONAL EXPRESS & TRANSPORTATION COMPANY, JOSEPH E. Johnston, President; Thomas Branch, Hamilton G. Fant, Michael G. Harman, John Echols, J. J. Kelly, C. R. Mason, W. J. Hawkins, and R. H. Maury, Directors Thereof, and Benjamin Ficklin, Superintendent Thereof, Defendants.

Exceptions taken by the said complainant to the answer put in by the defendant J. J. Kelly to the said complainant's bill of complaint.

1st exception.

403 For that the said defendant, J. J. Kelley, hath not to the best and utmost of his knowledge, remembrance, information, and belief answered and set forth or "given the names and residence of the persons who originally subscribed for the stock of said company and the amount subscribed by them respectively and the amount paid by them and each of them upon making such subscription and stated in regard to each the representations and promise made in order to induce such subscription," as by the third interrogatory in said bill contained he was required to do.

2nd exception.

For that he hath not "stated what amount or sums of money has been paid by said company and the names and residence of the persons to whom paid for services of any kind rendered to said company since the organization, the services for which it was paid, and in all cases whether the person to whom paid was in the actual service of the company or no, and the grade, title, or employment of such person in said company," as by the sixth interroga-
404 tory in said bill contained he was required to do.

3rd exception.

For that he hath not "stated fully in detail the sums of money paid or agreed to be paid to any railroad or steamboat company for transportation, specifying each such company to which money has been paid for transportation or agreed to be paid since the organization of the company and the services rendered, for such payments, nor set out fully any contract made with any such company, whether reduced to writing or no, for such payment or gift, nor stating fully the contract made with Reid & Co. and what was done in consequence of such contract," as by the seventh interrogatory in said bill contained he was required to do.

4th exception.

For that he hath not "stated what said Reed & Company were to give or do in return for payment so made or to be made to them," as by the tenth interrogatory in said bill contained he was required to do.

5th exception.

405 For that he hath not "stated fully and in detail the outstanding obligations of said company or any of its officers or agents on its account or behalf, whether on open account or contract, note, bond, bill of exchange, or draft, due or to become due and payable, and the amount, date of making, and due date of each; whether any and what persons have endorsed the paper of or become surety in any way for said company, especially whether any and which of its officers, agents, or employees have endorsed the paper of said company or in any way become security for its obligations or contracts and the consideration or motive for becoming so bound," as by the eleventh interrogatory in said bill he is required to do.

6th exception.

For that he hath not "stated fully and in detail the amount of interest which has been paid by said company from its organization for the loan or use of money or credit, name and residence of
406 the persons to whom interest or bonus has been paid for the use of money or credit, by the term credit being understood the use of the name of such persons as maker-, endorser-, or sureties of any kind for said company," as by the twelfth interrogatory in said bill he was required to do.

7th exception.

For that he hath not "stated fully the amount and kind of property owned or possessed by said company, specifying the amount paid for each item and its present value," as by the thirteenth interrogatory in said bill contained *as* he was required to do.

8th exception.

For that he hath not "stated fully the rent of each of the officers, depots, warehouses, buildings, or rooms of any kind rented or occupied by the company, the amount expended in fitting up, repairing, or altering the same, where situated, and the term of renting or lease, and the names and residence of owner or owners of such offices, warehouses, buildings, or rooms," as by the fourteenth interrogatory in said bill contained he was required to do.

9th exception.

407 For that he hath not "stated fully what losses the said company has made in transporting merchandise, money, or property of any kind, whether such losses have been paid or not; if not paid, the reason for refusing to pay, giving name, residence, and amount and kind of property claimed by each claimant and the

time of such loss," as by the fifteenth interrogatory in said bill contained he was required to do.

10th exception.

For that he hath not "stated fully and in detail the present financial condition of said company and the losses or gains made by conducting its business since its organization, giving the items of each loss or gain and the aggregate thereof," as by the sixteenth interrogatory in said bill contained he was required to do.

11th exception.

For that he hath not "stated the number of shares of the stock of said company regarded as delinquent and which were regarded by said company as subject to be sold under the advertisements
408 in the Richmond papers made by said company, filing copies of the advertisements of the sale of such stock and giving the name and residence of each stockholder thereof and the amount of stock held by each, and the reason why the sales did not take place as advertised, stating what notice of said intended sale, if any, other than said advertisements was given to each or any of the stockholders, and whether any protests or threats or injunction were made by them or any and which of them in order to stop said sales, stating whether any promises of exception or exclusion from said intended sales of the stock of any and which of said subscribers or stockholders were made and the reason or motive for such promises of exception and exclusion, filing copies of any letters, notices, protests, papers, or writing of any kind made by such stockholders in regard to said sales, and stating any oral complaints, threats, or notices of stockholders in regard thereto," as by the seventeenth interrogatory in said bill contained he was required to do.

12th exception.

409 For that he hath not "stated the names, residence, and grade of each and all of the officers, agents, and employés of said company, the amounts paid or agreed to be paid to each respectively for the services they render said company, stating whether on the organization of said company and since it has not been promised and agreed by said company and understood by its subscribers and stockholders and made known to the public that one leading object in establishing such company was to give employment to the officers and soldiers of the two armies of the United States and the so-called Confederate States disbanded by the close of the late rebellion, and was not such promise and agreement made to each subscriber at the time of subscription and held out as inducement to make subscription to its stock, stating how many of such officers and soldiers have been employed by said company since its organization and how many now are so employed giving the names, residences, and grade in said armies of each such soldier, distinguishing between the armies in which they served and giving the

amounts paid or agreed to be paid and to each and the grade
410 or employment of each in the service of said company," as by the eighteenth interrogatory in said bill contained he was required to do.

13th exception.

For that he hath not "stated fully what amounts were paid and to whom paid for conducting the business of said company before the legislature of Virginia at its late session of 1865 and 1866, giving the names of each person to whom money or stock was paid or given for such services, to whom of the members of said legislature was the stock of said company given or sold or offered, and the amounts so given, sold, or offered during or before the said session, stating fully the name and residence of each or any of the members of said legislature who were, during its session or now are, stockholders in said company," as by the nineteenth interrogatory in said bill contained he was required to do.

14th exception.

For that he hath not "stated fully what fees or compensation were paid or agreed to be paid in stock of said company or money to any attorney or counsel for advice or conducting any litigation
411 for the benefit or supposed comfort of said company, either in its own name or that of any of its stockholders, officers, agents, employees, or other persons, stating the name and residence of each of said attorneys or counsel and the amounts paid to each and the services for which it was paid, stating also the amounts paid in such litigation and to whom paid and for what," as by the twentieth interrogatory in said bill contained he was required to do.

15th exception.

For that he hath not "stated whether said company or any of its officers or agents on its behalf have become bound as principal or securities upon or to any injunction, bound or otherwise, in consequence of such litigation, and whether said company has made any and what arrangements to indemnify and save harmless any and which of its stockholders, officers, or agents or any other person from loss or damage in consequence of being so bound as principal or security to or upon any injunction, bond, or otherwise, filing copies of any written agreement made and give the substance of any oral agreements made for such purposes," as by the
412 twenty-first interrogatory in said bill contained he was required to do.

16th exception.

For that he hath not "stated fully each and all of the transfers made of the stock of said company on its books down to this time, what changes have been made in the form or substance of the certificates of its stock, and the name and residence of the present stockholders thereof," as by the twenty-second interrogatory in said bill contained he was required to do.

In all which particulars the answer of the said John J. Kelley is, as the said complainant is advised, imperfect, insufficient, and evasive, and the said complainant therefore excepts thereto and prays that the said defendant John J. Kelley may put in a further and better answer to the said bill of complaint.

H. H. WELLS,
Sol. & of Counsel for Compl't.

And on another day, to wit, at a circuit court of the United States for the circuit and district of Virginia held at Alexandria,
413 in said district, on the 31st day of December, 1866, the following order was entered, viz:

JOSIAH REYNOLDS, Complainant,
vs.
THE NATIONAL EXPRESS AND TRANSPORTATION COMPANY, JOSEPH E. JOHNSTON, President; Thomas Branch, Hamilton G. Fant, Michael G. Harman, John Echols, John J. Kelley, C. R. Mason, W. J. Hawkins, and R. H. Maury, Directors, and Benjamin Ficklin, Defendants.

The motion made in this cause by the complainant for the appointment of a receiver of the property and effects of the defendant The National Express and Transportation Company having been brought on for argument on bill, petition, and answer and the other papers filed in said cause, and the court having heard the arguments of the counsel for the complainant and the defendants and the court having had the same under advisement, it is considered that the complainant is entitled to the receiver as prayed for
414 in the bill and petition filed in this cause.

And, on motion of the solicitor for the complainant, it is ordered and decreed that a receiver be appointed, and that Westel Willoughby, Esquire, be, and he is hereby, appointed receiver of the said National Express & Transportation Company and of the money, property, and effects of the said National Express and Transportation Company, with all the powers, rights, and obligations usual in such cases, subject to the control of this court, until the affairs of said company be fully and finally closed up.

It is also ordered that the said Westel Willoughby, receiver, before entering upon the execution of said trust, do execute and file in this court a bond to the United States in the penal sum of
415 twenty thousand dollars ($20,000), with one or more sureties, to be approved by this court, conditioned for the faithful discharge of the duties of his appointment as such receiver of the funds, property, and effects of the said National Express and Transportation Company and for the faithful accounting for all the property, money, and effects which may come into his hands as such receiver.

That upon the execution, approval, and filing of said bond the said receiver shall be vested with all the estate, real and personal, as well as all the money, notes, accounts, assessments due on stock or other securities, or rights in action of the said National Express

and Transportation Company, as trustee of such estate and property, for the use and benefit of the creditors of said company and of its stockholders and others who may be interested in the same, with all the powers, rights, and authority of a trustee appointed by this court or acting within its jurisdiction and control.

Such receiver shall have all the powers and authority which
416 ordinarily belong to such trustee, and the said defendants, as well as all other persons who may have the possession or control of any of the money, books, property, effects, or things in action of the said National Express and Transportation Company, and especially John Blair Hodge, John J. Kelley, and C. Oliver O'Donnell, the trustees named in a pretended assignment referred to in the complainant's petition, are hereby required to assign, transfer, and deliver to the said trustee, on being notified of this order, all such money, property, notes, bonds, estate, real and personal, so in their hands or under their control, and they are also required to execute and deliver all deeds, conveyances, releases, transfers, or acquittances that may in anywise be necessary to place any or all of said property or effects so in the hands or under the control of the said receiver, and they and each of them, on being required, shall make all discovery and furnish all information which the said receiver may require in relation to any or all of the property, business, or transactions of the said company.

417 The said receiver will proceed to collect all the property, money, and effects of the said National Express and Transportation Company and convert the same into money, and he will also ascertain the amount of the debts and liabilities of the said National Express and Transportation Company, and, after payment therefrom of all expenses, including counsel fees and costs, with such compensation as the court may allow him, will, from time to time, apply the funds so received and obtained by him in the satisfaction and discharge of the debts of the said company under the orders of this court.

And if there shall be any sums due upon the shares of the capital stock of the said company the said receiver will proceed to collect and recover the same, unless the persons from whom the said sums may be due shall be wholly insolvent, and for this purpose may prosecute actions at law or in equity for the recovery of such sums in his own name as receiver or otherwise as he may deem best,

and shall apply the money so received under the order of this
418 court to the satisfaction and payment of the remaining debts of said company, as well all the legal and necessary expenses of the due execution of this trust, including a reasonable compensation and commission to himself for services on this behalf and also including such necessary and reasonable fees and costs as may be necessary in maintaining, prosecuting, or defending any suit or suits which it may be necessary to prosecute or defend in order to the full execution of this trust.

And said receiver shall immediately upon his appointment give notice to all the creditors of said company and to its stockholders and to all persons indebted thereto or holding any property, money,

or effects thereof of his appointment as receiver by this court by publishing the same in so many and such of the public newspapers within this district and elsewhere as he may deem proper, and may and shall give such other and further notice to such parties as he may think necessary.

If any property, money, of effects shall remain in the hands of the said receiver after paying all the debts of the said company and all the expenses of this trust he shall distribute the same
419 among the stockholders under the order of this court.

The said receiver shall at all times be subject to the order of this court, and may be compelled at any time to account and to give new, other, or additional bonds.

And it is further ordered that the said receiver cause notice to be given to all of the creditors of the said company to present and file with him a statement of all their demands against said company, with the vouchers for the same, and that notice of filing of his said bond and acceptance of this trust be given to all the said defendants, as well as the stockholders, by advertisement or otherwise.

Dated district of Virginia, December 31, 1866.

JOHN C. UNDERWOOD,
District Judge of the U. S. District of Virginia.

The foregoing order is endorsed as follows:

The bond required by the within order has been duly approved by me, and the clerk will, on filing the same, send to the receiver a certified copy of the order, with a certificate endorsed
420 thereon to the effect that the bond has been duly approved and filed, all under the seal of the court.

JOHN C. UNDERWOOD,
Dist. Judge.

And on another day, to wit, on the 22nd day of January, 1867, two certificates by the clerk of the said circuit court of the United States were filed in the papers of this cause, as follows:

Clerk's Certificate.

UNITED STATES OF AMERICA,
United States Circuit Court, District of Virginia, Clerk's Office.

I, William H. Barry, clerk of the circuit court of the United States for the district of Virginia aforesaid, do hereby certify that the above and foregoing is a true and complete copy of an order made and entered in a suit wherein Josiah Reynolds is complainant and The National Express and Transportation Company *et al.* are defendants, on the 31st day of December, A. D. 1866.

In testimony whereof I have hereunto set my hand and
421 affixed the seal of said court, at Richmond, in said district, this 22d day of January, in the year of our Lord one thousand eight hundred and sixty-seven.

W. H. BARRY, *Clerk*,
Per J. P. HODGES, *Dep'y.*

UNITED STATES OF AMERICA,
United States Circuit Court, District of Virginia, Clerk's Office.

I, William H. Barry, clerk of said circuit court, do hereby certify that Westel Willoughby has this day filed in my office a bond in the penal sum of twenty thousand dollars, approved by the Hon. J. C. Underwood, judge of said district, in compliance with an order entered in the above-entitled suit on the thirty-first day of December, A. D. 1866.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court, at the city of Richmond, in said district, this 22d day of January, A. D. 1867.

W. H. BARRY, *Clerk*,
Per J. C. HODGES, *Dep'y*.

422 The bond referred to in the foregoing certificate was filed on the 22nd day of January, 1867, and is in the words following:

Bond of Receiver.

Know all men by these presents that we Westel Willoughby Josiah Millard, Samuel N. Garwood, John Hawxhurst, and Jonathan Roberts of the city of Alexandria and State of Virginia, are held and firmly bound unto the people of the United States in the sum of twenty thousand dollars lawful money of the United States of America to be paid to the said people of the United States, for which payment well and true to be made we, and each of us bind ourselves respectively, and our respective heirs, executors, and administrators firmly by these presents. Sealed with our seals and dated this tenth day of January 1867.

Whereas by an order of the circuit court of the United States for the circuit and district of Virginia, in chancery, bearing date the 31st day of December, 1866, in which Josiah Reynolds is complainant and The National Express and Transportation Company,
423 Joseph E. Johnston, president, Thomas Branch and others, directors, and Benjamin Ficklin are defendants; the above-bounden Westel Willoughby was appointed receiver of the said National Express and Transportation Company, and of the money, property, and effects thereof with such powers and duties as are mentioned and more fully described in said order.

Now the condition of this obligation is such that if the above-bounden Westel Willoughby shall and do under the rules and practice of the said court, duly file his inventory, and as often as may be required by the court duly account for what he shall receive or have in charge as receiver in the said cause and pay and apply what he shall receive or have in charge, as he may, from time to time, be directed or ordered by the court; and do and perform his office of receiver in all things according to the true intent and meaning of

the aforesaid order, then this recognizance to be void, or else to remain in full force.

WESTEL WILLOUGHBY. [SEAL.]
JOSIAH MILLARD. [SEAL.]
S. N. GARWOOD. [SEAL.]
JNO. HAWXHURST. [SEAL.]
JONATHAN ROBERTS. [SEAL.]

424 STATE OF VIRGINIA, *County of Alexandria,* } *ss:*

I, Robert Bell, a justice of the peace for the county aforesaid, in the State aforesaid, do certify that Westel Willoughby, Josiah Millard, Samuel N. Garwood, John Hawxhurst, and Jonathan Roberts, whose names are signed to the writing above bearing date on the tenth day of January, 1867, have acknowledged the same before me in my county aforesaid.

Given under my hand this 10th day of January, 1867.

ROBERT BELL, *J. P.*

The sureties to the foregoing bond are approved.

JOHN C. UNDERWOOD,
Dist. Judge.

Jan'y 12, 1867.

And on another day, to wit, on the second day of February, 1870, the following petition was filed in the papers in this cause, viz:

425 *Petition of Washington Kelley.*

In the Circuit Court of the United States for the Dist. of Virginia.

REYNOLDS
vs.
THE NAT'L EXPRESS & TRANS. CO. } In Equity.

To the honorable the judges of the circuit court of the United States for the dist. of Virginia:

The petition of Washington Kelley, a citizen of the State of Maryland, respectfully shows that he is the owner of five (5) shares of the capital stock of The National Express and Transportation Company, defendant herein, which shares are original and have been his since shortly after the organization of said company; that he prays to be allowed to come in as party complainant, as said bill is filed on behalf of all stockholders who may come in and become parties complainant thereto.

He further prays that he may be allowed to file an amend-
426 ment and supplement to said bill setting forth matters and things which have transpired since the filing of the bill in his case.

H. H. WELLS,
Sol. for Complainant.
J. DEAN SMITH,
Att'y-in-Fact for Petitioner.

Endorsement on foregoing petition:

On reading and filing the foregoing petition, and on motion of counsel, it is hereby ordered that the several prayers of the said petition be, and the same are hereby, granted.

JOHN C. UNDERWOOD,
Dist. Judge.

Feb'y 2d, 1870.

And on another day, to wit, on the 22nd day of August, 1870, came Washington Kelley, whose name is signed to the above and foregoing petition, and, in accordance with the order endorsed thereon, filed an amended and supplemental bill in the papers of this cause, which amended and supplemental bill is in the words and figures following, to wit:

427 JOSIAH REYNOLDS, Stockholder, Compl't, *vs.* THE NATIONAL EXPRESS AND TRANSPORTATION CO. *et al.*, Defendants. } In Equity. In the Circuit Court of the United States for the Dist. of Virginia.

To the honorable the judges of the circuit court of the United States for the district of Virginia, sitting in equity:

Washington Kelley, a resident of the State of Maryland and a stockholder in and of the defendant The National Express and Transportation Co., by leave of this court contained in its order in this cause passed February 2nd, 1870, files this as an amendment to the original bill filed therein, and is a supplemental bill in the nature of a bill of revivor; and thereupon he complains and says:

1st. That complainant Reynolds filed the original bill in this cause on his own behalf and on behalf of all the stockholders of said National Express and Transportation Co., defendant, who should come in and contribute to the expenses of this suit, and on such behalf in said bill he complained of certain fraudulent, illegal, and unauthorized proceedings, actings, and doings
428 of said company and its president, directors, officers, and agents, in its name, by which the interests and property of said company and its stockholders were being irreparably injured and damaged, and prayed that the said president, directors, officers, and agents of said company be enjoined and restrained from the further commission of such illegal and unauthorized proceedings, doings, and actings and for general relief, as will appear by said bill filed in this cause, and to which he prays to refer as part of this bill, and this complainant, as stockholder at the time the same was filed, was equally interested in said suit with said Reynolds and willing and ready to contribute to the expenses of the suit, but it was not then necessary to become a formal party thereto by name.

2nd. That the process of this court in this suit issued upon said original bill was served upon Joseph E. Johnson, president; Thomas Branch, Hamilton G. Fant, Michael G. Harman, John Echols, John J. Kelley, C. R. Mason, W. J. Hawkins, and R. H. Maury, directors, and

Benjamin Ficklin, superintendent, of said express company,
429 defendant, which, with the said Kelley, appeared and answered said bill of complaint, and, upon motion to issue injunction according to the prayer of said bill, this court, after full argument by said defendants and consideration thereof and of said bill, answers, and exhibits filed in this cause, ordered the injunction be issued as prayed, and it was accordingly issued and served upon said defendants, as will appear by the notices, orders of court, and injunction issued by this court, filed in this cause, and to which he prays to refer as part of this bill.

3rd. That after the filing of said original bill and the issue of the process of this court thereon and service thereof upon said defendants, and the issue of said injunction, certain persons, residents and citizens of the State of Maryland, to wit, C. Oliver O'Donnell, D. G. Toby, Austin Dall, and William Devins, were made directors of said express company, and —— Perot, a citizen of said State of Maryland, the president thereof; that said persons all had notice of the pendency of said suit and of said injunction issued therein and were represented by counsel in this cause; that said persons, as officers and agents of said
430 corporation, by virtue of certain orders and resolutions passed by them as such officers, ordered the said president, Joseph E. Johnson (prior to the making said Perot president), to make and execute to C. Oliver O'Donnell, J. J. Kelley, and John Blair Hoge a deed of trust, under the seal of said corporation, conveying to them all the property, assets, and claims and subscriptions of stock due said corporation upon certain trusts for benefit of the creditors of said corporation, as will appear from a copy of said deed filed herewith as part of this bill, marked Compl't's Exhibit No. 1; that after the execution of said deed the said Reynolds, in his own behalf and on behalf of all the stockholders of said express Co., defendant, filed a petition in this cause setting out the above facts and praying this court to take possession of the property and effects of said company and subject the same to the payment of the debts due by it in such manner as to this court might seem fit and necessary, as will appear by the said petition filed in this cause and to which this complainant prays to refer as part of this bill.

431 4. That said Hoge, O'Donnell, and Kelley, the trustees named in said deed, appeared in this court and answered said petition, as did said officers and agents of said corporation itself by them, and set up said deed and claimed to act under the authority thereof in winding up and settling the affairs of said express Co., defendant; but this court, after full argument and consideration thereof and of the petition, answers, and exhibits filed therewith, passed an order appointing Westel Willoughby receiver of this court in this cause and trustee of the estate and property of said corporation for the use and benefit of its creditors, and ordered the said Hoge, O'Donnel, and Kelley, the trustees named in said deed, to assign, transfer, and deliver to said Willoughby, as trustee, all the property and to clothe him with all the powers conferred upon them by said deed and to make discovery and furnish all information in

regard thereto, as will appear by the said order filed in this cause and to which he prays to refer as part of this bill.

5th. That after said order was passed due notice thereof was
432 given to said corporation and its officers, defendants, and to said Hoge, O'Donnell, and Kelley, said trustees, and said Willoughby demanded of said trustees said property and conveyance, but said officers and said trustees have wholly neglected and refused to obey and comply with said order, and, being now residents of the State of Virginia for the most part and out of the jurisdiction of this court, cannot be reached by its process to compel obedience thereunto; that this is specially the case in regard to the said Hoge, Kelley, and O'Donnell, who reside out of the jurisdiction of this court, though they appeared in this suit, Hoge and O'Donnell in the State of Maryland, and, as your orator is informed and believes, Kelley resides in the city of New York; that said trustees by means of said deed of trust possessed themselves of all the books and papers of said corporation and its seal, as well as a part of its property and money, and notwithstanding said orders removed to or retained the same in the State of Maryland and utterly neglected and refused to deliver and convey the same to said Willoughby, and have utterly neglected and refused to perform
433 said orders or to perform other duty as trustees under said deed in any respect whatever, and said Willoughby, in consequence thereof, has been unable to perform and carry out said order, to the great injury of the stockholders and creditors of said corporation.

6th. That since the above-recited proceedings in this cause the said Reynolds died intestate, and his administrator having fully settled up his estate according to law, refuses to revive this suit, which, so far as he was personally interested therein as a stockholder, has abated; but your orator is advised and he insists that, said suit and the several proceedings therein being for the common and equal benefit of all the stockholders, your orator as such is entitled to revive and carry on this suit on his own behalf and on behalf of all the stockholders of said corporation who may come in and take part of the benefits thereof as though said Reynolds were still alive and prosecuting the same, and he therefore prays that he may be
434 permitted to carry on said suit on such behalf against said defendants, said National Express and Transportation Company, and the said defendants, its officers, and the said Hoge, O'Donnell, and Kelley, and to have the benefits of this suit and said proceedings therein as fully as if said Reynolds were alive and prosecuting the same in his place.

7th. Your orator states and charges that he is the owner of five shares of the stock of the said National Express and Transportation Company for which he subscribed originally, and that he has paid into the capital stock of said company twenty per cent. of the said subscription, which was all that he was called upon to pay by the officers of said company, and is ready and offers to pay such further part of such subscription as this court may find necessary and proper as his equitable proportion, in order to pay, liquidate, and

extinguish the debts due by said corporation, as well as the expenses incident to this suit and the winding up of the affairs
435 of said corporation thereunder.

8. That the debts due by said corporation amount to about five hundred thousand dollars and the subscriptions due to it by solvent subscribers and stockholders, which they are bound to pay in liquidation of its debts, amounts to nearly two million dollars: that the said debts are due to divers persons and corporations and firms, citizens of several States. Some of them have been reduced to judgment and one of them, being a judgment for over one hundred thousand dollars, rendered in New York city, is now being sued upon in the city of Baltimore as against the individual subscribers and stockholders of said corporation, and in the several suits against them it is sought to recover not only the amount due by them by subscription, but by virtue of a clause and provision in the charter of said corporation double the amount of such subscription, and your orator is threatened with a like suit against him, and he files herewith as part of this bill, marked Complainant's Exhibit No. 2, a blank declaration used in said suits already commenced
436 and to be used in the threatened suit against him when brought, and, further, that another debt due by said corporation, but which has not been reduced to judgment, is also being sued upon in said city of Baltimore as against its subscribers and stockholders, and your orator is threatened with suit upon this debt likewise.

9th. And your orator avers and charges that the amount due said corporation by its stockholders and subscribers who are solvent are willing to pay their equitable proportion of the amount of its debt is more than double its debts, but that if they are harrassed by litigation and in event of a recovery in the suits already commenced and threatened made to pay not only the amount of their stock, but an equal amount under the personal liability clause of the charter of said corporation, many of them, like your orator, will be ruined and all of them who are sued will suffer great injustice while most of the stockholders, though equally liable, will not be called upon to pay, and he is advised and avers and charges that the only
437 way in which the stockholders of said corporation who are sued and threatened with suit can escape such injustice and avoid the harrassment of said suits and be allowed to pay an equal, equitable proportion of the liabilities of said corporation is by this honorable court administering the affairs of said corporation and winding it up under its orders for the collection of such equal and ratable proportion of the subscription of each stockholder as may be necessary to pay its liabilities and the expenses of such collection and administration.

10th. And your orator states and charges that the stockholders and subscribers of and to said corporation reside in and are citizens of several States, and he is advised that if said trustees Hoge, O'Donnell, and Kelley had obeyed the orders of this court and had conveyed and assigned to the trustee Willoughby as directed and commanded all their right, title, and interest under said deed of

trust that said trustee of this court could have compelled said subscribers to pay such proportion of their subscription to the
438 stock of the said company as this court should deem proper, in order to liquidate the debt of said company in a manner equitable and just to all of them; and he is advised that, said deed having been made pending this suit and said trustees being parties hereto and having neglected and refused to obey said order and being out of the jurisdiction of this court, it is proper and competent to it to have such conveyance of all the right, title, and interest conveyed by said deed of trust to said trustee by said National Express and Transportation Company made under its order as shall divest said trustees of all power and authority given by said deed and confer such power and authority under said deed to the said Willoughby, the said trustee appointed under said order of this court.

11th. And your orator further states and charges that said officers and agents of said corporation and said Hoge, Kelley, and O'Donnell, said trustees, have so utterly neglected and refused to
439 perform the duties they owe to said corporation and have so entirely demitted such officers and duties by non-user since the making of said deed of trust, that said corporation is virtually dissolved for want of necessary officers, and even most of those who were its last elected officers, and especially the said Perot, its president, reside out of the jurisdiction of this court and beyond reach of its process and out of the State by which it was chartered, and that though no legal or formal dissolution has taken place, yet he is advised and charges that it is competent to this court to take and use its name and corporate powers for the purpose of doing equity to its stockholders by calling upon them for and enforcing the payment of the whole amount of unpaid subscription and legal liability or such equitable proportion as may be necessary to raise a sufficient sum to pay its debts and the expenses incident as though said corporation and its powers were in the hands of and administered by a full board of regularly elected and qualified officers; and he is further advised, and so charges, that, by the law of Virginia under which said corpora-
440 tion was chartered and exists in its present impotent condition, even if it were dissolved, and especially where its functions are, as is the case as shown herein, merely suspended, its name and corporate power may be used in suits everywhere to enforce payment of debts due it and especially to enforce the subscriptions due it and unpaid by its stockholders and their legal liability, if necessary, to pay its debts, and that in fact its subscribers and stockholders are so bound by said law as to be estopped from denying or disputing the use of its name and powers under the order of this court for that purpose in the courts of any State in which they may reside and in which suits may be brought to enforce their liability to said corporation; and he is further advised, and so charges, that it is entirely competent and proper to this court, by an order passed herein, to authorize and empower the said Willoughby to use the name and powers of said corporation in any

State in which any of the subscribers or stockholders reside
441 to enforce their liability, by suit in its name in any competent court having jurisdiction of the contracts made by them, to pay said corporation or its creditors the amounts due by them respectively under said law, and also as against said trustees, Hoge, Kelley, and O'Donnell, to recover from them the books, papers, property, or money of said corporation in their hands.

12th. And he further states and charges that the indebtedness of said corporation all accrued prior to the making of said deed of trust except a small part which was incurred while its business was conducted by its officers prior to said trustees assuming to act under said deed in taking possession of its property and effects obtained possession thereof; that said indebtedness was incurred for supplies and material for conducting said business, for transportation of its freight, for services rendered by its employés, for purchase of the business and property of an express company known as the Reed & Co. Express, for notes given by it and endorsements made for its account, and for losses and damages in-
442 curred in the prosecution of its business by persons employing it as a common carrier; and your orator is informed and believes, and so charges, that though most of said indebtedness is just and proper, yet some of the claims are not, and require examination and adjudication in this court, and under its orders in this cause the debt due for the purchase of the Reed Express has been reduced to judgment in the State of New York and is the one upon which suits have been brought in the city of Baltimore. The other claim sued upon in said city is one in which it is sought to charge the stockholders or a part of them who reside in said city for a loss sustained by a shipper of freight by said corporation as a common carrier, under the personal liability clause in its charter; and he further states and charges that while it is eminently just and proper that all of said claims and debts which are fair and honest should be paid without delay, by an equitable contribution equally
443 made by all solvent stockholders for that purpose, and your orator is ready and anxious to pay his equal and equitable proportion under the order of this court in this case, yet without such an equitable assessment by its authority your orator and other stockholders will be harrassed by numerous and conflicting suits and claims and eventually be compelled to pay, in event of recovery in said suits, in unequal and unequitable proportions without any recourse, save, perhaps, in suits for contribution against those stockholders who have not paid in the same proportion; and he avers and charges that, as the said stockholders are very numerous and are citizens of several States, such remedy is impracticable; and he is advised, and so charges, that this court, having complete jurisdiction of the corporation in this suit, in the exercise of its equity powers, which specially include such cases as this, is fully competent, through its orders to its trustee, to fix the proportion to be paid by its stockholders and to collect it when fixed and to decide
444 upon and liquidate all its debts and to release its stockholders from further liability by its final decree in this cause.

Inasmuch as your orator and said stockholders are remediless in the premises save in a court of equity, to the end, therefore that he and the other stockholders of said National Express and Transportation Company may have the affairs and business of said company wound up and completely settled in this suit, its assets collected, and its debts paid and said stockholders discharged of all further liability on account thereof by the payment of such proportion or the whole of their subscription and liability on account thereof as may be necessary and equitable to discharge its fair and honest debts, and that your orator and said stockholders may have the full benefit of the proceedings in this suit and of said order of this court appointing said Willoughby trustee as aforesaid, and that as such trustee he may be clothed and invested with all the powers and duties conferred and imposed by said deed of trust executed by said company during its pendency to said trustees Hoge, Kelley,
and O'Donnell, either by the conveyance to said Willoughby
445 by said trustees of all their right, title, and interest as trustees, or, in event of the failure of said trustees to appear and convey the same under the order of this court, that some suitable person may be appointed to make such conveyance and said trustees be discharged from said trust, and that said Willoughby, in addition to the powers and authority of said deed, may, by the order of this court, be authorized and empowered to use the name and corporate power of said National Express and Transportation Company to collect the amounts of money due from the stockholders and subscribers to it, and to recover the books, papers, and property of said corporation from said trustees or from any person in possession of the same, and to sue at law or in equity for this purpose in any State or Federal court having jurisdiction of said stockholders *of* said trustees, and that your orator or such stockholders as may become parties hereto may *lose* such other and further orders as the exigen- of this cause may require, and that he and they may have such further and other relief as may be proper and as to the court may seem fit and necessary.

446 May it please your honors to pass an order commanding and requiring said O'Donnell, Kelley, and Hoge, trustees named in said deed, and the said Perot to be and appear in this court upon some certain day to be therein named, upon personal service upon them of a copy of such order ten days before such certain day fixed for their appearance, to assign and convey to said Willoughby all the estate, title and interest, and authority conferred by said deed or which it is in the power of said Perot, claiming to be president of said company, or, in the event of the failure of said parties to appear, to have said Hoge, Kelley, and O'Donnell dismissed as trustees and some suitable person appointed as commissioner of this court to make all necessary and proper conveyances to vest all title, authority, and power under said deed or which can be conveyed by said company to said trustee Willoughby; and an order authorizing said Willoughby, as such trustee, to sue in any court of any State or of the United States any of the stockholders, subscribers, or debtors of said corporation of said trustees under

said deed to recover the amount due by them or any of the
447 money, property, books, or papers thereof in their hands; and an order authorizing and empowering said Willoughby to use the corporate name of said National Express and Transportation Company in any suit at law or in equity in the State of Virginia or in any State, in any court having jurisdiction of the persons or property of any of the stockholders or subscribers of said company or its debtors or of said Hoge, Kelley, and O'Donnell, to recover the amounts due by them to said company or to which they may be liable, or any of the books, papers, effects, or property of said company in their hands or in possession of any person whatever; and that this court will from time to time pass such other and further order as may be requisite and necessary in order to wind up the affairs of said company, liquidate its debts, and discharge its stockholders from further responsibility in regard thereto.

And that your orator and the other stockholders and subscribers may have such other and further relief as their case may require or as to the court may seem meet.

And he will ever pray, &c.

J. DEAN SMITH,
Att'y-in-Fact of Washington Kelley.

H. H. WELLS,
Of Counsel for Def'ts.

448 And on another day, to wit, on the 11th day of December, 1880, came Westel Willoughby, heretofore appointed receiver in this cause, and filed his report as such as follows:

Report of Receiver W. Willoughby.

In the Circuit Court of the United States for the Eastern District of Virginia.

JOSIAH REYNOLDS and Others
vs.
THE NATIONAL EXPRESS AND TRANSPORTATION COMPANY *et al.* } In Equity.

I have the honor to report that, having been appointed receiver and trustee in this cause and having given the bond required and qualified according to the order appointing me, I made all possible inquiry and efforts to obtain possession of the property.

I found, however, that a receiver had been appointed by the State court of Maryland, who had possession of all or nearly all of the books and papers of the company. I found also that, so far as I
could ascertain, in all the States in which the company oper-
449 ated the property and effects of the company had been attached and seized by creditors of the company. I was unable to obtain possession of any property of the company, except two freight cars then in possession of what was then the Orange and Alexandria Railroad Company. These I took possession of and sold

at public sale, the proceeds being a little less than one thousand dollars.

I employed counsel to prosecute my claims as receiver, and incurred large expenses in endeavoring to procure the books and papers and other property of said company, so that the money received by me was not more than sufficient to reimburse me for the expenses incurred and to remunerate myself for the time and labor employed.

None of the creditors have submitted their claims to me, and there seems for many years to have been no demand for any action by me, and none of the stockholders or officers of the company have given me any assistance, but all have appeared to be adverse to my
450 taking action in the matter, and neither the plaintiff nor any one for him has taken any action or asked for any action for at least ten years.

Some of the creditors, however, I am informed, are desiring to proceed to the enforcement of their claims by another proceeding, and at the request of their counsel I make this report, he saying that it is satisfactory to him, but I am willing, however, if required, to make a more detailed report. If it is not required, I would desire to have an order made discharging me as such receiver and from all liabilities on account thereof.

W. WILLOUGHBY,
Receiver, &c.

Dec'r 10th, 1880.

And now, at this day, to wit, at a circuit court of the United States for the eastern district of Virginia, held at the city of Richmond, in said district, on the 10th day of December, in the year of our Lord 1880.

451 JOSIAH REYNOLDS *et al.*
against
THE NATIONAL EXPRESS AND TRANSPORTATION COMPANY *et als.* } In Equity.

Upon the report of Receiver W. Willoughby being filed, on motion of the defendants John Blair Hoge and J. J. Kelly, by John Howard, their counsel, it is adjudged, ordered, and decreed that the order of the 31st of December, 1866, filed on the 22nd day of January, 1867, appointing a receiver in this case, be, and the same is hereby, vacated, annulled, and set aside, and said Receiver W. Willoughby be discharged and exonerated, the injunction heretofore granted in this cause be dissolved, and this suit be dismissed.

RO. W. HUGHES, *Judge.*

Richmond, 10 Dec., 1880.

452 UNITED STATES OF AMERICA, } *To wit:*
Eastern District of Virginia,

I, M. F. Pleasants, clerk of the circuit court of the United States for the eastern district of Virginia, do hereby certify that the fore-

going is a true and complete transcript of the record and proceedings of the said court in the above-entitled cause.

In testimony whereof I have hereto set my hand and affixed the seal of said court this 18th day of March, 1886.

[SEAL.] M. F. PLEASANTS, *Clerk.*

UNITED STATES OF AMERICA, }
Eastern District of Virginia, } *ss:*

I, Robert W. Hughes, judge of the district court of the United States for the eastern district of Virginia, sitting as circuit judge of said district, hereby certify that M. F. Pleasants, whose name is signed to the foregoing certificate, is, and was at the time of
453 signing the same, clerk of said court; that his signature is genuine and his said attestation in due form of law.

Given under my hand this 18th day of March, 1886.

RO. W. HUGHES, *Judge.*

454 And the plaintiff then and there duly excepted to the ruling of the court and to the said certified and exemplified copy of said record marked Exhibit "G" being admitted in evidence and being allowed to be read in evidence; and said exception was at the time duly noted on the minutes of the court by the presiding justice, and said plaintiff then and there tendered to the court this his 1st bill of exceptions, and then and there prayed the court to sign and seal the same, which is accordingly done, now for then, this twenty-seventh day of December, A. D. 1890.

M. V. MONTGOMERY, *Justice.* [SEAL.]

And after the evidence had been given which is set forth in the aforegoing bill of exceptions, which is hereby expressly referred to as a part and made a part of this the plaintiff's second bill of exceptions, the defendant rested without giving any further evidence to prove the issues on his part joined in the above-entitled cause;
455 and the evidence on both sides having been closed, the plaintiff thereupon prayed the court to instruct the jury as follows:

"That this action having been brought within three years after the decree of the circuit court of Henrico county, Virginia, passed on the twenty-sixth (26th) of March, A. D. eighteen hundred and eighty-six (1886), the plea of the statute of limitations constitutes no defense to the same."

But the court refused to grant said prayer; to which refusal of the court to grant said prayer the plaintiff then and there duly objected and excepted, and the exception was at the time duly noted upon the minutes of the court by the presiding justice, and said plaintiff then and there tendered to the court this his second bill of exceptions, and then and there prayed the court to sign and seal the same, which is accordingly done, now for then, this 27 day of December, A. D. 1890.

M. V. MONTGOMERY, *Justice.* [SEAL.]

456 And after the evidence had been given as set forth in the plaintiff's first bill of exceptions, and had been closed, as set forth in the plaintiff's second bill of exceptions, which are hereby referred to and made part of this the plaintiff's third bill of exceptions, the plaintiff further prayed the court to instruct the jury as follows:

"That the decree of the chancery court of the city of Richmond passed July twenty-first (21st), eighteen hundred and eighty-three (1883), appearing in the transcript of record marked Exhibit "A," offered in evidence, constitutes no defense to this suit and does not relieve the defendant from liability for the amount of the assessment made by the decree of the circuit court of Henrico county passed on the twenty-sixth (26th) of March, A. D. eighteen hundred and eighty-six (1886), offered in evidence in this case."

But the court refused to grant said prayer; to which refusal of the court to grant said prayer the plaintiff then and there duly objected and excepted, and the exception was at the time
457 duly noted upon the minutes of the court by the presiding justice, and said plaintiff then and there tendered to the court this his third bill of exceptions, and then and there prayed the court to sign and seal the same, which is accordingly done, now for then, this 27 day of December, A. D. 1890.

M. V. MONTGOMERY, *Justice.* [SEAL.]

And after all the evidence had been given as set forth in the plaintiff's first bill of exceptions, and had been closed as set forth in the plaintiff's second bill of exceptions, which are hereby referred to and made a part of this his fourth bill of exceptions, the defendant prayed the court to instruct the jury as follows:

"That the plaintiff cannot maintain this action as brought in his own name, and the jury must find for the defendant."

To which instruction and to the granting of the same the plaintiff then and there duly objected; but the court overruled the plaintiff's objections and granted and allowed the defendant's said
458 prayer; whereupon the plaintiff then and there duly excepted to the granting and allowing of the defendant's said prayer, and the exception was at the time duly noted upon the minutes of the court by the presiding justice, and said plaintiff then and there tendered to the court this his fourth bill of exceptions, and then and there prayed the court to sign and seal the same, which is accordingly done, now for then, this 27 day of December, A. D. 1890.

M. V. MONTGOMERY, *Justice.* [SEAL.]

And thereupon the court charged the jury on the evidence mentioned and set forth in the plaintiff's first bill of exceptions after the evidence on both sides had been closed as set forth in the plaintiff's second bill of exceptions, which are referred to as part and are made a part of this the plaintiff's fifth bill of exceptions, as follows:

"On the evidence I must instruct you to find a verdict for the defendant."

And to the above charge the plaintiff then and there duly objected; but the court overruled the plaintiff's objections and gave the said charge as above set forth, and the plaintiff then and there duly excepted to the court's giving the said charge to the
459 jury, and the exception was at the time duly noted upon the minutes of the court by the presiding justice, and the plaintiff then and there tendered to the court this his fifth bill of exceptions, and then and there prayed the court to sign and seal the same, which is accordingly done, now for then, this 27 day of December, A. D. 1890.

M. V. MONTGOMERY, *Justice.* [SEAL.]

460 MONDAY, *January 5th*, 1891.

Proceedings before the supreme court of the District of Columbia, sitting in general term, beginning the first Monday, January 5th, 1891.

Present, presiding: Justices Hagner, James, Montgomery, and Bradley.

By order of the court, proclaimed by the marshal.

THURSDAY, *February* 19, 1891.

Session resumed pursuant to adjournment.

Present: Justices Bingham, Hagner, and James.

JOHN GLENN, Plaintiff,
vs.
J. CARTER MARBURY, Defendant. } At Law. No. 29475, Cal. 215.

Argued for the plaintiff by Messrs. Robinson and Marshall and by John J. Johnson for the defendant, and submitted to the court.

FRIDAY, *April* 3, 1891.

Session resumed pursuant to adjournment.

Present: Chief Justice Bingham and Justice Montgomery.

No cause asking to be heard before two justices.
Adjourned *sine die.*

461 MONDAY, *April 6th*, 1891.

Proceedings before the supreme court of the District of Columbia, sitting in general term, beginning the first Monday, April 6, 1891.

Present, presiding: Chief Justice Bingham and Justices James & Montgomery.

By order of court, by proclamation of the marshal.

MONDAY, *May* 25, 1891.

Session resumed pursuant to adjournment.
Present: Chief Justice Bingham and Justice James.

JOHN GLENN
vs.
J. CARTER MARBURY. } 29475. Law.

Because it appears to the court here that there is no error in the record and proceedings and in the judgment of the supreme court of the District of Columbia, holding a circuit court and a special term, it is by the court considered that the said judgment be, and hereby is, affirmed with costs, and that the appellee do recover against the plaintiff, appellant, his costs about the cause expended and have execution therefor.

462 *Opinion of Court in General Term. Filed June* 16, 1891.

In the Supreme Court of the District of Columbia, in General Term.

JOHN GLENN, Trustee,
vs.
J. CARTER MARBURY. } At Law. No. 29475.

MONDAY, *May 25th*, 1891.

Opinion of the court by Chief Justice Bingham.

The case was submitted to the court at the last term and very fully argued, and very full briefs submitted on the various questions at issue between the parties, and the case has been very carefully considered by the court as constituted at the time of the hearing. This case does not present new questions to the court. The same questions substantially were presented in a suit of the same character against another stockholder of the same company in a suit by Glenn, trustee, *vs.* Busey, reported in Fifth Mackey, at p. 233.

Two of the issues in each of these cases are the issues pre-
463 sented by the fifth and sixth pleas to the declaration in the case at bar, and that is a denial that the plaintiff has any right to sue in this court in his own name as trustee.

We rest the decision of this case upon the law as settled by the elaborate and carefully considered opinion of Mr. Justice Cox in Glenn *vs.* Busy, and regard the latter case as determining the law for this jurisdiction, so long as it may not be otherwise determined by the Supreme Court of the United States. The distinctions sought to be shown between this and the former case are not such as, in our judgment, justify us in departing from that case.

The judgment of the circuit court is affirmed.

E. F. BINGHAM, *C. J.*

463½ *Petition for Writ of Error, Citation, Bond, &c., and Prayer for Reversal. Filed June* 25, 1891.

In the Supreme Court of the United States.

At Law. No. 29475.

JOHN GLENN, trustee under a deed of trust bearing date on the 20th day of September, A. D. 1866, and made by the National Express and Transportation Company, a body politic and corporate under the laws of the State of Virginia, and trustee under the decree of the chancery court of the city of Richmond, in the State of Virginia, in the suit of William W. Glenn's Administrator *et al. vs.* The National Express and Transportation Company *et al.*, for the purposes of the trusts under said deed of said corporation and said decree, substituted and appointed by the decree of said chancery court in said cause, under the laws of the State of Virginia in such case made and provided, as trustee in said deed in the room and stead of the trustees therein named, and as such substituted trustee clothed with all the rights and powers and charged with all the duties of executing the trusts of said deed, and as such substituted trustee authorized and directed by the decree of the circuit court of the county of Henrico, in said State (to which court last mentioned said cause had been duly removed and was at the time of its decree therein pending), to collect and receive a call and assessment made by said decree of said circuit court in said cause, Plaintiff and Plaintiff in Error,

vs.

J. CARTER MARBURY, Defendant and Defendant in Error.

To the Supreme Court of the United States and to the honorable the Chief Justice and associate justices of said court:

464 Your petitioner, who is the plaintiff and plaintiff in error in this cause, complains and shows and says—

That in the record and proceedings, as also in the rendition of a judgment in a plea or action, which is in the supreme court of the District of Columbia, before said court, between the plaintiff aforesaid and the defendant aforesaid (being the above cause), manifest error or errors hath or have happened, to the great damage of said plaintiff, as will more fully and at large appear by an assignment of errors this day filed and hereby expressly referred to as a part hereof.

Wherefore the said plaintiff and plaintiff in error prays for a writ of error and citation and such other process as may be necessary, and such bond and approval thereof as may be requisite to cause the same to be brought before the Supreme Court of the United States and to cause and enable the same to be corrected by said Supreme Court of the United States, and he hereby prays for a reversal, and he will ever pray, &c., &c.

HENRY WISE GARNETT AND
CONWAY ROBINSON, JR.,
Attorneys for Plaintiff and Plaintiff in Error.

465 *Assignment of Errors and Prayer for Reversal. Filed June 25, 1891.*

In the Supreme Court of the United States.

At Law. No. 29475.

JOHN GLENN, trustee under a deed of trust bearing date on the 20th day of September, A. D. 1866, and made by The National Express and Transportation Company, a body politic and corporate under the laws of the State of Virginia, and trustee under the decree of the chancery court of the city of Richmond, in the State of Virginia, in the suit of William W. Glenn's administrator *et al. vs.* The National Express and Transportation Company *et al.*, for the purposes of the trusts under said deed of said corporation and said decree, substituted and appointed by the decree of said chancery court in said cause, under the laws of the State of Virginia in such case made and provided, as trustee in said deed in the room and stead of the trustees therein named, and as such substituted trustee clothed with all the rights and powers and charged with all the duties of executing the trusts of said deed, and as such substituted trustee authorized and directed by the decree of the circuit court of the county of Henrico, in said State (to which court last mentioned said cause had been duly removed, and was at the time of its decree therein pending), to collect and receive a call and assessment made by said decree of said circuit court in said cause, Plaintiff and Plaintiff in error,

vs.

J. CARTER MARBURY, Defendant and Defendant in error.

Now comes the plaintiff, who is the plaintiff in error in this cause, and makes this his assignment of errors, and for such

466 assignment of errors says that in the record, proceedings, rulings of the court, and judgment in this cause in the supreme court of the District of Columbia there are manifest errors which have intervened to his great damage and prejudice, and that there are errors in this, to wit:

First. That the supreme court of the District of Columbia, sitting in general term, erred in affirming the ruling of the supreme court of the District of Columbia, holding a circuit court and special term, by which said court admitted in evidence the transcript of the record of the suit of Josiah Reynolds *et al.* against The National Express and Transportation Company *et al.*, in the circuit court of the United States for the eastern district of Virginia, sitting in equity, said transcript being the same that is designated in the first bill of exceptions of plaintiff as Exhibit "Y," to which reference is hereby made as if the said transcript was herein fully set forth.

Second. That the supreme court of the District of Columbia, sitting in general term, erred in affirming the ruling of the supreme court of the District of Columbia, holding a circuit court and spe-

cial term, by which ruling said court refused to grant the plaintiff's first prayer, which is worded as follows:

"That this action having been brought within three years after the decree of the circuit court of Henrico county, Virginia, passed on the twenty-sixth (26th) of March, A. D. eighteen hundred
467 and eighty-six (1886), the plea of the statute of limitations constitutes no defense to the same," said prayer and said ruling being the same that are set forth and excepted to in the plaintiff's second bill of exceptions, to which reference is hereby made as if the same was herein fully set forth.

Third. That the supreme court of the District of Columbia, sitting in general term, erred in affirming the ruling of the supreme court of the District of Columbia, holding a circuit court and special term, by which said court refused to grant the plaintiff's second prayer, which is worded as follows:

"That the decree of the chancery court of the city of Richmond, passed July twenty-first (21st), eighteen hundred and eighty-three (1883), appearing in the transcript of record, marked Exhibit 'A,' offered in evidence, constitutes no defense to this suit and does not relieve the defendant from liability for the amount of the assessment made by the decree of the circuit court of Henrico county, passed on the twenty-sixth (26th) of March, A. D. eighteen hundred and eighty-six (1886), offered in evidence in this case;" said prayer and said ruling being the same that are set forth and excepted to in the plaintiff's third bill of exceptions, to which reference is hereby made as if the same was herein fully set forth.

Fourth. That the supreme court of the District of Columbia, sitting in general term, erred in affirming the ruling of the supreme court of the District of Columbia, holding a circuit court and special term, by which said court granted the defendant's prayer, which prayer is worded as follows:

"That the plaintiff cannot maintain this action as brought in his own name and the jury must find for the defendant;" said prayer and said ruling being the same that are set forth and excepted to in the plaintiff's fourth bill of exceptions, to which reference is hereby made as if the same was herein fully set forth.

468 Fifth. That the supreme court of the District of Columbia, sitting in general term, erred in affirming the ruling of the supreme court of the District of Columbia, holding a circuit court and special term, in the charge of said court to the jury; which charge is worded as follows:

"On the evidence I must instruct you to find a verdict for the defendant;" said charge and said ruling being the same that are set forth and excepted to in the plaintiff's fifth bill of exceptions, to which reference is hereby made as if the same was herein fully set forth.

Sixth. That the supreme court of the District of Columbia, sitting in general term, erred in sustaining the decision of the supreme court of the District of Columbia, holding a circuit court and special term; which decision overruled the motion for a new trial filed in this cause on the 1st day of December, A. D. 1890.

Seventh. That the supreme court of the District of Columbia, sitting in general term, erred in affirming the judgment of the supreme court of the District of Columbia, holding a circuit court and special term, as was done by the said court sitting in general term on the 25th day of May, A. D. 1891, and erred in entering judgment against the plaintiff as was then and there done, because the court held that the plaintiff was not entitled to maintain this suit in his own name, and erred in not setting aside the verdict and judgment of the supreme court of the District of Columbia, holding a circuit court and special term, which judgment was rendered on November 28th, A. D. 1890, and erred in the decision and judgment of the supreme court of the District of Columbia, sitting in general term, rendered on May 25th, A. D. 1891, and worded as follows:

469 " Because it appears to the court here that there is no error in the record and proceedings and in the judgment of the supreme court of the District of Columbia, holding a circuit court and a special term, it is by the court considered that the said judgment be, and hereby is, affirmed with costs, and that the appellee do recover against the plaintiff, appellant, his costs about the cause expended and have execution thereof;" and said court, sitting in general term, erred in not granting a new trial in this cause.

Eighth. That the supreme court of the District of Columbia, sitting in general term, erred in not giving to the law of the State of Virginia and to the decrees of the court in the transcript of record marked Exhibit "A" for identification and to said transcript of record such force and effect as said laws and said decrees and said transcript of record under the laws of the State of Virginia are entitled to under the provisions of the Constitution of the United States and act of Congress in such case made and provided, in this, to wit, that the court decided that said transcript of record had not the effect of enabling the plaintiff to maintain this action in his own name, said transcript of record being a transcript of the record of the suit of Glenn's Administrator *et al. vs.* The National Express and Transportation Company and others, commenced in the chancery court of the city of Richmond and being the same designated as Exhibit "A" in the plaintiff's first bill of exceptions, to which reference is hereby made as though said transcript was herein fully set forth.

Ninth. That the supreme court of the District of Columbia, sitting in general term, erred in deciding that the plaintiff, John Glenn, the plaintiff in error in the Supreme Court of the United States, could not maintain this action in his own name and in entering judgment against said plaintiff for that reason.

470 Tenth. That there are other and manifest errors in said record, as will appear by inspection thereof, and which are hereby assigned, by which and by each and all of which said errors in the plaintiff's assignment of errors referred to the plaintiff, who is the plaintiff in error in this cause, is injured and aggrieved. Wherefore (the amount in controversy being over the jurisdictional

amount of $5,000.00) he hereby now prays for a correction of said error and for a reversal of the judgment or judgments against him.

HENRY WISE GARNETT AND
CONWAY ROBINSON, JR.,
Attorneys for the Plaintiff and Plaintiff in Error.

471 In the Supreme Court of the District of Columbia, the 25th Day of June, 1891.

No. —. In Error.

JOHN GLENN, trustee under a deed of trust bearing date on the 20th day of September, A. D. 1866, and made by The National Express and Transportation Company, a body politic and corporate under the laws of the State of Virginia, and trustee under the decree of the chancery court of the city of Richmond, in the State of Virginia, in the suit of William W. Glenn's Administrator *et al. vs.* The National Express and Transportation Company *et al.*, for the purposes of the trusts under said deed of said corporation and said decree, substituted and appointed by the decree of said chancery court in said cause, under the laws of the State of Virginia in such case made and provided, as trustee in said deed in the room and stead of the trustees therein named, and as such substituted trustee clothed with all the rights and powers and charged with all the duties of executing the trusts of said deed, and as such substituted trustee authorized and directed by the decree of the circuit court of the county of Henrico, in said State (to which court last mentioned said cause had been duly removed and was at the time of the decree therein pending), to collect and receive a call and assessment made by said decree of said circuit court in said cause, Plaintiff and Plaintiff in Error,

vs.

J. CARTER MARBURY, Defendant and Defendant in Error.

472 Know all men by these presents that we, John Glenn (the plaintiff in this suit) and John M. Glenn, are bound unto the above-named J. Carter Marbury in the sum of ($500.00) five hundred dollars, to be paid to the said J. Carter Marbury, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 25th day of June, 1891.

Whereas the above-named John Glenn (the plaintiff in this suit) hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named John Glenn (the plaintiff in this suit) shall prosecute his said writ of error to effect and answer all the damages and costs is he shall fail to make good his plea, then this obligation shall be

void; otherwise the same shall be and remain in full force and virtue.

JOHN GLENN. [SEAL.]
JOHN M. GLENN. [SEAL.]

Signed and delivered in presence of—
THOS. H. RALSTON, JR.

Approved.
JOHN M. HARLAN,
Asso. Justice Sup. C't U. S.

Endorsed: This bond is satisfactory in all respects and the security is ample. J. J. Johnson, attorney for defendant, J. C. Marbury.

473 *Writ of Error. Filed Jun-* 25, 1891. *R. J. Meigs, Clerk.*

To the Supreme Court of the United States.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court, before you, between John Glenn, trustee under a deed of trust bearing date on the 20th day of September, A. D. 1866, and made by the National Express and Transportation Company, a body politic and corporate under the laws of the State of Virginia, and trustee under the decree of the chancery court of the city of Richmond, in the State of Virginia, in the suit of William W. Glenn's Administrator *et al. vs.* The National Express and Transportation Company *et al.*, for the purposes of the trusts under said deed of said corporation and said decree, substituted and appointed by the decree of said chancery court in said cause, under the laws of the State of Virginia in such case made and provided, as trustee in said deed in the room and stead of the trustee therein named, and as such substituted trustee clothed
474 with all the rights and powers and charged with all the duties of executing the trusts of said deed, and as such substituted trustee authorized and directed, by the decree of the circuit court of the county of Henrico, in said State (to which court last mentioned said cause had been duly removed and was at the time of its decree therein pending), to collect and receive a call and assessment made by said decree of said circuit court in said cause, plaintiff, and J. Carter Marbury, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears, and it being fit that the error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, therefore you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days

from the date hereof in the said Supreme Court, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 25th day of June, in the year of our Lord one thousand eight hundred and ninety-one, and of the Inde-
475 pendence of the United States the one hundred and fifteenth.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk Sup. C't U. S.

The foregoing writ is hereby allowed.

JOHN M. HARLAN,
Asso. Justice S. C. U. S.

476 *Citation. Filed Jun-* 25, 1891. *R. J. Meigs, Clerk.*

To the Supreme Court of the United States.

The United States of America to J. Carter Marbury, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at Washington, within thirty days of the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein John Glenn, trustee under a deed of trust bearing date on the 20th day of September, A. D. 1866, and made by the National Express and Transportation Company, a body politic and corporate under the laws of the State of Virginia, and trustee under the decree of the chancery court of the city of Richmond, in the State of Virginia, in the suit of William W. Glenn's Administrator *et al. vs.* The National Express and Transportation Company *et al.*, for the purposes of the trusts under said deed of said corporation and said decree, substituted and appointed by the decree of said chancery court in said cause, under the laws of the State of Virginia in such case made and provided, as trustee in said deed in the room and stead of the trustees therein named, and as such substituted trustee clothed with all the rights and powers and charged with all the duties of executing the trusts of said deed, and as such substituted
477 trustee authorized and directed by the decree of the circuit court of the county of Henrico, in said State (to which court last mentioned said cause had been duly removed and was at the time of its decree therein pending), to collect and receive a call and assessment made by said decree of said circuit court in said cause, is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected so that speedy justice be done the parties in that behalf.

Witness John M. Harlan, associate justice of the said Supreme Court of the United States, this 25th day of June, in the year of our Lord one thousand eight hundred and ninety-one.

JOHN M. HARLAN,
Associate Justice Sup. C't U. S.

Due and sufficient service of the foregoing and annexed citation upon me personally, on this twenty-sixth day of June, in the year of our Lord one thousand eight hundred and ninety-one, is hereby accepted and acknowledged.

J. CARTER MARBURY,
Defendant and Defendant in Error.

478 AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, Return J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 26th day of June, 1891.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By H. W. HODGES,
Assistant Clerk.

Justice's Certificate.

I, E. F. Bingham, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 26th day of June, 1891.

E. F. BINGHAM, [SEAL.]
Chief Justice.

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that E. F. Bingham, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 26th day of June, 1891.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By H. W. HODGES,
Assistant Clerk.

[Endorsed:] Authentication of record.

Endorsed on cover: District of Columbia supreme court. No. 1231. John Glenn, trustee, plaintiff in error, *vs.* J. Carter Marbury. Filed June 27, 1891.

Office Supreme Court U. S.
FILED.
JAN 2 1892
JAMES H. McKENNEY.
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 1231.

JOHN GLENN, TRUSTEE, &c., PLAINTIFF IN ERROR,

vs.

J. CARTER MARBURY, DEFENDANT IN ERROR.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

HENRY WISE GARNETT and
CONWAY ROBINSON, JR.,
Attorneys for Plaintiff, Who is the Plaintiff in Error.

JUDD & DETWEILER, PRINTERS.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 1231.

JOHN GLENN, TRUSTEE, &c., PLAINTIFF IN ERROR,

vs.

J. CARTER MARBURY, DEFENDANT IN ERROR.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

This is an action brought by the plaintiff in the court below, who is the plaintiff in error, to recover from the defendant in the court below, who is the defendant in error, 50 per cent. of the par value of his stock in the National Express and Transportation Company, he being the holder and owner of 100 shares thereof, each of the par value of $100, and the same being by the terms of his contract payable as called for by the president and directors of said company. The company was a Virginia corporation, chartered in that State in 1865. It soon became largely indebted and greatly embarrassed, and on September 20, 1866, made an assignment of all its property, including its unpaid and uncalled subscriptions, to trustees for the benefit of its creditors.

The stockholders thereafter, by resolutions in general meeting, ratified and affirmed this deed and the right of the trustees to the unpaid subscriptions. Afterwards a chancery suit was brought in Virginia by a judgment creditor of the corporation against the company, certain of its officers, and the trustees in the deed of assignment. By the decrees in said suit the original trustees were removed and a new trustee was substituted in their place, with all their rights, powers, and duties; the deed was decreed to be valid and to pass the unpaid and uncalled subscriptions to the trustees, but not to pass the calling power; the assets and liabilities were ascertained, and the only available assets were found to be the uncalled subscriptions in the hands of the stockholders, amounting to 80 per cent. of the par value of the stock, and that it was necessary to resort to said uncalled subscriptions in order to pay the company's debts; and accordingly the court in said cause decreed first a call of 30 per cent. and afterwards a second call of 50 per cent. of the par value of the stock against the stock and stockholders severally; and authorized and directed the substituted trustee to collect and receive the same and to take such prompt steps to that end, by suit or otherwise, and in such jurisdictions as he should be advised.

This suit is brought by him to recover said 50 per cent. call from the defendant, who is the defendant in error, as a stockholder in said company. By stipulation it is admitted that the defendant is an original stockholder for 100 shares of the stock of said company and an original subscriber therefor, and that he has received his certificate therefor and has only paid 20 per cent. on his said stock. (Rec., 19, 298.)

The nature of the unpaid and uncalled subscriptions and their assignability; the nature of the calling power and its non-assignability; the deed of assignment of September 20, 1866, and its force and effect, and that it assigned the unpaid and uncalled subscribtions, but did not assign the calling

power; that it prevented the creditors from thereafter proceeding directly against the stockholders, as they might otherwise have done, and that it necessitated their obtaining relief through the trustees and under and according to the terms and provisions of said deed of assignment; that said deed was an express agreement by each and all the stockholders as integral parts of the corporation that the trustees might in their own names sue the stockholders for their unpaid subscriptions whenever the same were duly called for; that the subsequent resolutions of the stockholders in general meeting were a further agreement by them to the same effect; that the chancery suit, Exhibit "A" (Rec., 25 to 298), was a proper remedy for the creditors under the circumstances, the uncalled subscriptions being the only available assets, and the company having failed and neglected to make an assessment and call upon the stockholders for the same, and the trustees having failed and neglected to compel one; that the service upon the corporation was regularly and properly made in that case, and that the court acquired full and complete jurisdiction over it in said cause; that the president and directors and also the stockholders were represented by the corporation in that suit, and consequently that they, as well as the corporation, were bound by the decrees passed in that cause; that the court had full jurisdiction and power to remove the old trustees and to substitute a new trustee in their place, and to clothe the substituted trustee with all the rights and powers and charge him with all the duties of the old trustees, and to do so and to work a complete substitution and transfer by force of its *mere* decree, both as a court of general chancery jurisdiction and under special statutory jurisdiction; that it did so by its decree of December 14, 1880 (Rec., 182); that the court in said cause had full jurisdiction as a court of chancery to establish the validity of the deed of September 20, 1866, and to interpret and construe it; to decide that it passed the uncalled subscriptions, but not

the calling power; also to ascertain and establish the assets and liabilities of the corporation and the necessity of resorting to the unpaid subscriptions in order to pay the company's debts, and to make the first, and afterwards to make the second, assessment and call upon the stockholders for their unpaid subscriptions, and to decree that the stockholders should pay the same to the substituted trustee, and to authorize and direct him to collect and receive the same, by suit or otherwise, and in such jurisdictions as he should be advised; that by the decrees in said cause the court did all of these things, and had full power and authority so to do, and had the proper and necessary parties before the court to enable it to do so, and that the stockholders as individuals were not necessary or proper parties to said cause, and that as integral parts of the corporation they were represented by it and were in contemplation of law before the court and were bound by the decrees in the cause *that all that was passed upon, or might have been passed upon,* in said cause is *res adjudicta* and cannot be attacked or questioned in this case; that neither laches nor the statute of limitations interpose any defense to this action; that the statute of limitations did not commence to run in favor of the defendant until the assessment and call was made by the decree of March 26, 1886, in said cause; that the plaintiff can sue in the District of Columbia, and that he can maintain his action as brought *in his own name* in the supreme court of the District of Columbia, in said District; that the force and effect of said transcript of record and of the decrees therein under the law of Virginia was to authorize and empower the plaintiff to sue thereon *in his own name,* and that under the Constitution of the United States and the act of Congress in such case made and provided the same force and effect must be given to said transcript of record in the District of Columbia in this action as it was entitled to under the laws of Virginia—all of these

are questions involved. The declaration contains a special count and the common counts in assumpsit. (Rec., 1 to 10.)

The defendant pleaded—

1. That he was never indebted as alleged.

2. That he never promised as alleged.

3. That the plaintiff's alleged cause of action did not accrue within three years before the institution of this suit.

4. That the chancery court of the city of Richmond had no jurisdiction to make the decree of the 14th day of December, A. D. 1880, in the declaration mentioned.

5. That the plaintiff, claiming to sue as trustee, as set forth in his declaration, has no right to sue in this Court.

6. That the plaintiff, claiming to sue as trustee, as set forth in his declaration, has no right to sue in his own name in this Court. (Rec., 17.)

At the trial the plaintiff offered and the court admitted in evidence without objection on the part of the defendant a certified copy of the record of a certain chancery cause, Exhibit "A" (Rec., 24 to 298); also a stipulation of counsel, Exhibit "D" (Rec., 298, 299), and under and in pursuance of said stipulation read said Exhibit "A" in evidence, and also read in evidence from said record (Exhibit "A") under said stipulation certain documents therein contained, namely, the "act or acts of incorporation of the National Express and Transportation Company" and the deed of assignment or deed of trust of September 20, 1866 (Rec., 299, 300). The plaintiff also offered and the court admitted in evidence without objection on the part of the defendant separate and distinct certified copies of said deed and of said act or acts of incorporation (Rec., 300) and a certified copy of the acceptance of the charter, Exhibit "C" (Rec., 300, 301), and

said prayer and said ruling being the same that are set forth and excepted to in the plaintiff's second bill of exceptions, to which reference is hereby made as if the same was herein fully set forth.

Third. That the supreme court of the District of Columbia sitting in general term erred in affirming the ruling of the supreme court of the District of Columbia holding a circuit court and special term, by which said court refused to grant the plaintiff's second prayer, which is worded as follows:

"That the decree of the chancery court of the city of Richmond passed July twenty-first (21st), eighteen hundred and eighty-three (1883), appearing in the transcript of record marked Exhibit "A," offered in evidence, constitutes no defense to this suit and does not relieve the defendant from liability for the amount of the assessment made by the decree of the circuit court of Henrico county passed on the twenty-sixth (26th) of March, A. D. eighteen hundred and eighty-six (1886), offered in evidence in this case;" said prayer and said ruling being the same that are set forth and excepted to in the plaintiff's third bill of exceptions, to which reference is hereby made as if the same was herein fully set forth.

Fourth. That the supreme court of the District of Columbia, sitting in general term erred in affirming the ruling of the supreme court of the District of Columbia holding a circuit court and special term, by which said court granted the defendant's prayer; which prayer is worded as follows:

"That the plaintiff cannot maintain this action as brought in his own name, and the jury must find for the defendant;" said prayer and said ruling being the same that are set forth and excepted to in the plaintiff's fourth bill of exceptions, to which reference is hereby made as if the same was herein fully set forth.

Fifth. That the supreme court of the District of Columbia

sitting in general term erred in affirming the ruling of the supreme court of the District of Columbia holding a circuit court and special term, in the charge of said court to the jury; which charge is worded as follows:

"On the evidence I must instruct you to find a verdict for the defendant;" said charge and said ruling being the same that are set forth and excepted to in the plaintiff's fifth bill of exceptions, to which reference is hereby made as if the same was herein fully set forth.

Sixth. That the supreme court of the District of Columbia sitting in general term erred in sustaining the decision of the supreme court of the District of Columbia holding a circuit court and special term; which decision overruled the motion for a new trial filed in this cause on the 1st day of December, A. D. 1890.

Seventh. That the supreme court of the District of Columbia sitting in general term erred in affirming the judgment of the supreme court of the District of Columbia holding a circuit court and special term, as was done by the said court sitting in general term on the 25th day of May, A. D. 1891, and erred in entering judgment against the plaintiff, as was then and there done, because the court held that the plaintiff was not entitled to maintain this suit in his own name, and erred in not setting aside the verdict and judgment of the supreme court of the District of Columbia holding a circuit court and special term, which judgment was rendered on November 28, A. D. 1890, and erred in the decision and judgment of the supreme court of the District of Columbia sitting in general term rendered on May 25th, A. D. 1891, and worded as follows:

"Because it appears to the court here that there is no error in the record and proceedings and in the judgment of the supreme court of the District of Columbia holding a circuit court and special term, it is by the court considered

that the said judgment be, and hereby is, affirmed with costs, and that the appellee do recover against the plaintiff, appellant, his costs about the cause expended and have execution thereof;" and said court sitting in general term erred in not granting a new trial in this cause.

Eighth. That the supreme court of the District of Columbia sitting in general term erred in not giving to the law of the State of Virginia and to the decrees of the court in the transcript of record marked Exhibit "A" for identification and to said transcript of record such force and effect as said laws and said decrees and said transcript of record under the laws of the State of Virginia are entitled to under the provisions of the Constitution of the United States and act of Congress in such case made and provided, in this, to wit: That the court decided that said transcript of record had not the effect of enabling the plaintiff to maintain this action in his own name, said transcript of record being a transcript of the record of the suit of Glenn's Administrator *et al vs.* The National Express and Transportation Company and others, commenced in the chancery court of the city of Richmond and being the same designated as Exhibit "A" in the plaintiff's first bill of exceptions, to which reference is hereby made as though said transcript was herein fully set forth.

Ninth. That the supreme court of the District of Columbia sitting in general term erred in deciding that the plaintiff, John Glenn, the plaintiff in error in the Supreme Court of the United States, could not maintain this action in his own name, and in entering judgment against said plaintiff for that reason.

Tenth. That there are other and manifest errors in said ~~said~~ record, as will appear by inspection thereof and which are hereby assigned, by which and by each and all of which said errors in plaintiff's assignment of errors referred to, the

plaintiff, who is the plaintiff in error in this cause, is injured and aggrieved. Wherefore (the amount in controversy being over the jurisdictional amount of $5,000) he hereby now prays for a correction of said error and for a reversal of the judgment or judgments against him.

Brief of argument.

I.

AS TO UNPAID AND UNCALLED SUBSCRIPTIONS.

The character of a stockholder's unpaid subscription and the power of the company over the same same is now well settled.

"The power of a corporation over the rights of a stockholder, whether that power is to be exercised by the *directors* or by a *majority of the stockholders*, extends to *the amount of his subscription.* * * * By becoming a member the stockholder places a specified amount of his private property in the common fund and *subjects it* to the *control* of the company, according to its laws and regulations" (Ireland *vs.* Palestine, &c., Co., 19 Ohio St., 374). "The capital stock constitutes the sole fund to which creditors look, &c. * * * It is the basis of the credit which is extended to the corporation," &c. (Adler *vs.* The M. P. B. M'f'g Co., 13 Wis., 60). "When debts are incurred *a contract arises with the creditors* that it shall not be withdrawn or applied otherwise than upon their demands, &c. * * * The *creditors* have a *lien* upon it. * * * It is publicly *pledged* to those who *deal* with the corporation for their security" (Sanger *vs.* Upton, 91 U. S., 60). It is now firmly established that the *entire* capital stock is a *trust fund* for the payment of the corporation's debts (Wood *vs.* Dummer, 3 Mason C. Ct., 311, 312; Bartlett *vs.* Drew, 57 N. Y., 589; Curran *vs.* Arkansas, 15 How.,

307, 308.) And the same principle is declared in the following cases, which hold that the *unpaid subscriptions* in the *hands of stockholders* are a part of the capital stock of the corporation (Ogilvie *vs.* The Knox Ins. Co., 22 How., 387, 388; Sawyer *vs.* Hoag, 17 Wall., 620; Sanger *vs.* Upton, 91 U. S., 60; Webster *vs.* Upton, 91 U. S., 66; Scoville *vs.* Thayer, 105 U. S., 154; Ward *vs.* Griswoldville M'f'g Co., 16 Conn., 600; Marsh *vs.* Burroughs, 1 Woods C. Ct., 469; Adler *vs.* The M. P. B. M'f'g Co., 13 Wis., 60, 61, 62; Man *vs.* Pentz, 3 Comstock, 3 N. Y., 422; G. P. R'y Co. *vs.* Fitler, 60 Pa. St., 131; Payson *vs.* Stoever, 2 Dillon C. Ct., 432; Shockley *vs.* Fisher, 75 Mo., 501.) And accordingly that *such unpaid subscriptions* in the hands of the stockholders are a part of this *trust fund* for the payment of corporate debts (Scoville *vs.* Thayer, 105 U. S., 154; Marsh *vs.* Burroughs, 1 Woods C. Ct., 469.) "*Unpaid* stock is *as much a part of this pledge and as much a part of the assets* of the company *as the cash* which has been *paid upon it*" (Sawyer *vs.* Upton, 91 U. S., 61; Ogilvie *vs.* Knox Ins. Co., 22 How., 388). "Such *unpaid balance* is regarded as a part of its capital *as much as if it were collected and in its treasury*" (Upton *vs.* Hansbrough, 10 Nat'l B'k'cy Reg., R. 374), or, as expressed in another case, it "is *as much pledged* to all parties dealing with the bank for payment of the bank's liabilities *as the cash in its vaults*" (Lionberger *vs.* B. S. B'k, 10 Mo. App., 506). As far back as 1873 this court said: "Though it be a doctrine of modern date, we think it well established that the capital stock of a corporation, ESPECIALLY *its unpaid subscriptions, is a* TRUST FUND for the benefit of the general creditors of the corporation" (Sawyer *vs.* Hoag, 17 Wall., 620). Such is the doctrine, irrespective of any deed of trust; and where, as in the case at bar, there is a deed of trust by the company for the benefit of its creditors the doctrine is doubly strong (Hawkins *vs.* Glenn, 131 U. S., 329, 332, 333).

II.

AS TO THE CALLING POWER.

The nature of the *power* of making an assessment and call upon stockholders for their unpaid subscriptions should also be kept in mind. It involves the exercise of *judgment* and *discretion* and *cannot be delegated* by the corporation (Silver Hook Road *vs.* Green, 12 R. I., 165; Ins. Co. *vs.* Chase, 56 N. H., 345, 346). Such a power is a *franchise* of the corporation, and *as such is not assignable* by the company without legislative authority. It was so held where an assignee, under a deed from the corporation, attempted to exercise the power (Hurlbut *vs.* Root, 12 How. Pr., 512). Where there was an assignment by a corporation to secure its creditors and *afterwards* a call was made by the company and the assignee sued a stockholder on said subsequent call, and the stockholder objected to the legality of the call because it was made by the company instead of by the assignee, the court held that the *property rights* in the *uncalled* part of the subscriptions *passed to the assignee;* but *not* the *calling power;* that such *power* remained in the corporation, notwithstanding the assignment, and that the call by the company was therefore binding. The court say:

"Its FRANCHISES and *powers not capable of assignment* must be exercised by it" (G. P. R'y Co. *vs.* Fitler, 60 Pa. St., 132). See also The W. C. & P. R. R. Co. *vs.* Thomas, 2 Phila., 308; and Lionberger *vs.* B. S. B'k, 10 Mo. App., 505, 506, 507. In the last of these the corporation, after making an assignment of its property for the benefit of its creditors, *refused* to make *a call* upon the stockholders for the balance of their *unpaid* subscriptions, and the assignee filed a bill in equity to compel a call, and prayed the court to, *itself*, make a call *payable to the assignee*, and the court *sustained* the bill and *granted the relief prayed*, holding that the *property rights* in the *uncalled* subscriptions *were assignable* and *passed to the assignee;* but *not*

authority, to assign the calling power *cannot be enforced*, while *a call made by a court of chancery may be enforced?* The answer is a plain and simple one. Not only the *uncalled subscriptions* are a *trust fund* for the *benefit* of and *security* of the corporate *creditors*, but also the corporate *franchises* are held IN TRUST for such creditors.

III.

VALIDITY OF THE DEED OF TRUST.

The validity of the deed of September 20, 1866, cannot be questioned in the case at bar; but had its validity *not been passed upon* in the Richmond chancery suit (Exhibit "A"), still, under the authorities, it would have to be sustained. That a corporation may execute such a deed is well established (Lionberger *vs.* B. S. B'k, 10 Mo. App., 508, 513; Franklin *vs.* Menown, *id.*, 573; Menown *vs.* Crawford, *id.*, 575; Dana *vs.* The B'k of U. S., 5 Watts & Serg., 223; Pickering *vs.* I. R'y Co., 37 L. J. C. P., 122; G. P. R'y Co. *vs.* Fitler, 60 Pa. St., 131; Shockley *vs.* Fisher, 75 Mo. 500, 501, 502); and that in making such a deed it may give some of its creditors preference over others is equally well established (Sargent *vs.* Webster, 13 Metc., 503, 504). "It (the corporation) had the right, which all other debtors had at the time, to make preferences among its creditors—to pay one rather than another" (New Albany *vs.* Burk, 11 Wall., 103); and even the mere actual insolvency of a corporation does not prevent it from so doing (Catlin *vs.* Eagle B'k, 6 Conn., 242, 244; Savings B'k *vs.* Bates, 8 *id.*, 512; Allen *vs.* M. R. R. Co., 11 Ala., 453, 454; Dana *vs.* The B'k of U. S., 5 Watts & Serg., 223); and where the corporation has done so no creditor can successfully assail the preference so given where he had, at the time of the assignment, no superior title, lien, or equity (Sergent *vs.* Webster, 13 Metc., 503, 504; Catlin *vs.* Eagle B'k, 6 Conn., 242; Ward *vs.* Griswoldville

M'f'g Co., 16 *id.*, 601). An unsuccessful attempt to assail the deed of September 20th, 1866, was made by William W. Glenn in Maryland as far back as October 6, 1866; but he failed and said deed was sustained as valid) B. & O. R. R. *vs.* Glenn, 28 Md. 321, 322, 326, and Rec., 219). *This question was, however, settled once and forever and for all jurisdictions by the decree in the Richmond chancery suit (Exhibit "A"), which decreed it valid and binding on all parties* (Rec. 181, 218, 219). The court of appeals of Virginia have also so decided (Lewis, adm'r, *vs.* Glenn, 84 Va., 959; S. C., 6 Southeastern Rep., 873, 874).

IV.

EFFECT OF DEED OF TRUST.

The deed of September 20, 1866, being valid and binding, what was its effect; what the status of the trustees under it, and what the rights of creditors after it was made? In Virginia *trustees* under such a deed are held to be *purchasers for value* (Evans *vs.* Greenhow, 15 Gratt., 153; W. A. & G. R. R. Co. *vs.* A. W. & G. R. R. Co., 19 *id.*, 592). They have far greater rights than the company ever had. They represent the *corporation* and *its creditors*. Even where a *mere receiver* is appointed at the *instance of creditors* to enforce *their* rights in a suit by him he does not *merely* represent the corporation. The court is bound to look *beyond* his mere appointment and *to the rights of those standing behind him and do justice to them* (Nathan, receiver, *vs.* Whitlock, 3 Edward's Ch., 222; Gillet, receiver, *vs.* Moody, 3 Comst. (N. Y.), 488). So *an assignee in bankruptcy*, as against the stockholders, is the representative *both* of the *corporation* and *its creditors* (Upton *vs.* Hansbrough, 10 Nat'l B'k'cy Reg. R., 378, 379; Payson *vs.* Stoever, 2 Dillon C. Ct., 431; Sawyer *vs.* Hoag, 17 Wall., 619, 621; Webster *vs.* Upton, 91 U. S., 71); and so *an assignee for the benefit of creditors under a voluntary deed of assignment* represents *both* the *corporation* and *its creditors* (Shockley

vs. Fisher, 75 Mo., 500, 501, 502). Except for the deed of September 20, 1866, creditors might have proceeded as in Ogilvie *vs.* The Knox Ins. Co., 22 How., 380, and Hatch *vs.* Dana, 101 U. S., 214; but *after that deed creditors could no longer so proceed* (Sargent *vs.* Webster, 13 Metc. (Mass.), 503, 504; Pickering *vs.* I. R'y Co., 37 L. J. C. P., 122). Where a statute authorized a judgment creditor of a company to proceed by motion against the stockholders to subject unpaid subscriptions and a creditor *who got his judgment* AFTER *an assignment by the company* so proceeded the court decided against him and held that the assignment vested *in the assignee* the *property rights* in the *unpaid subscriptions* as trustee for *all* the creditors and vested *in said assignee the* EXCLUSIVE *right to collect the unpaid subscriptions,* and that *no motion* could *thereafter* be prosecuted by *creditors* against *individual stockholders* under the statute; that an assignment does not divest *precedent* liens, but that no creditor *not having a precedent lien* upon the debtor's property can *thereafter* proceed to subject it (Franklin *vs.* Menown, 10 Mo. App., 573). "*By the assignment* by the corporation, &c., the right to collect unpaid stock subscriptions *was vested in the assignee,* and *no creditor* whose proceeding against a stockholder had *not* been instituted at the *date* of the assignment *is entitled so to proceed*" (Menown *vs.* Crawford, 10 Mo. App., 575). The law of Virginia provides that "upon every subscription for shares in any joint-stock company (other than a bank of circulation) there shall be paid upon each share two dollars at the time of subscribing *and the residue as required by the president and directors*" (§ 3, ch. 57, Code of Va., 1873, which is the same as the like section of the previous Code of 1860). When the deed of September 20, 1866, was made 80 per cent. of the subscriptions remained uncalled for (Rec., 29, 198). That unpaid subscriptions of stock *not called in* are *assignable* in a general assignment for the benefit of creditors; that they (but not the calling power) pass to the assignee; that the unpaid subscriptions (not called for) are equitable assets be-

cause of the remedy; that the right of the assignee must be asserted *in equity* because the subscriptions *are not payable* to the company *until called for* and *there has been no call* and *a court of law cannot compel a call;* that equity has jurisdiction to entertain a bill by the *assignee* acting on behalf of all the creditors to obtain an assessment and call, so as to enable him to recover such unpaid subscriptions, and that the right of the assignee to apply to a court of equity for such relief is not created by statute, but exists independently of statute, is held in the following cases, in which the questions are carefully and elaborately considered: Lionberger *vs.* B. S. B'k, 10 Mo. App., 508, 511, 512, 513; Shockley *vs.* Fisher, 75 Mo., 500, 501, 502; G. P. R'y Co. *vs.* Fitler, 60 Pa. St., 131, 132—in which cases the assignee filed a bill in equity to obtain a call and the court decreed the same in his favor. Where a corporation had been adjudged a bankrupt on a creditor's petition and the assignee in bankruptcy petitioned for and obtained from the bankruptcy court *an assessment and call upon the unpaid stock* of the stockholders and then sued a stockholder on said call to recover the same, the court say: "The plaintiff, as the assignee in bankruptcy of the R. I. Co., represents as against its stockholders the rights both of the bankrupt *company* and *its creditors.* The company being in bankruptcy, *all* the *claims* of its creditors *must be established in the bankruptcy court* and its *assets collected* and *distributed* under the superintendence of *that* court. Whether *under its charter* the *company*, if it had *not* been thrown into bankruptcy, could collect from the stockholders the *full* amount of their *unpaid stock*, or could only collect so much as might be necessary to pay '*losses*' proper as distinguished from '*liabilities*,' it is not necessary to determine, *for clearly the unpaid stock is liable to* CREDITORS *for* ALL *debts and legal liabilities*, and the *assignee* represents the *creditors* as well as the *company.* However it might have been *before, creditors* cannot, *since* the supervention of bankruptcy,

bring bills in equity or other actions in their own names directly against the stockholders to enforce their liability with respect to their unpaid stock. The liability on the part of the stockholders is one which *is imposed for the benefit of creditors,* and *creditors must* NOW secure the benefit of it *through the assignee.* The necessity of the assessment of the bankruptcy court is not collaterally inquirable into *in every or* ANY *action* brought to enforce payment of such assessment. Such questions must be decided in that court."

Payson *vs.* Stoever, 2 Dillon C. C't, 431, 432.

Creditors are as much bound to enforce their rights under and through the assignee in the case of a *voluntary* deed of assignment as in the case of bankruptcy proceedings. This Court, Miller, J., has said: "It is unnecessary to go into the inquiry whether this claim was acquired before the commission of an act of bankruptcy by the company or the effect of the bankruptcy proceedings. *The result would be the same if the corporation was in the process of liquidation* IN THE HANDS OF A TRUSTEE *or under legal proceedings*" (Sawyer *vs.* Hoag, 17 Wall., 623). The court of appeals of Virginia sustained these positions in Lewis *vs.* Glenn, 84 Va., 947. These questions came before this Court under this identical deed of September 20, 1866, and this Court announced its opinion in the following language: "By the deed the *subscriptions,* so far as *uncalled for, passed* to the *trustees,* and the creditors were *limited* to the relief which could be afforded *under it,* while the stockholders could be subjected only to *equality* of assessment, and as the trustees could not collect *except upon call,* and had themselves *no power* to make one, rendering resort to the president and directors necessary, or, *failing* their action, then *to the courts,* it is *very clear* that the statute of limitations could not commence to run until *after the call was made.*" (Glenn *vs.* Hawkins, 131 U. S., 333.)

The right of an *assignee in bankruptcy,* as the representa-

tive of creditors, to proceed *in the bankruptcy court* under *its chancery powers* to obtain an *assessment and call*, as was done in the cases of Payson *vs.* Stoever, 2 Dillon C. C't., 431, 432, and Upton *vs.* Hansbrough, 10 Nat'l B'k'cy Reg. R., 369, is unquestionable.

And the right of an *assignee under a voluntary deed of assignment*, as the representative of creditors, to proceed *in the chancery court* to obtain such relief, as was done in the case of Shockley *vs.* Fisher, 75 Mo., 590, 501, is equally unquestionable.

Indeed, it is his duty so to do. If he *refuses* or *fails* to do so, however, then *a creditor* as a beneficiary under the trust, and because the *unpaid subscriptions* are a *trust fund* for *his* benefit and the power of making as assessment and call is a *trust franchise* for *his* benefit, may himself file a bill in chancery *to compel such relief, not in opposition* to the assignment, but *under and according to its terms and provisions* (Glenn *vs.* Williams, 60 Md., 113, 114; Glenn *vs.* Hawkins, 131 U. S., 333; Hightower *vs.* Thornton, 8 Ga., 504, 505). In the first two of these cases the court had before it and was speaking of the identical proceeding now under consideration, namely, the Richmond chancery suit (Exhibit "A"), when it held that a creditor undoubtedly had a right so to proceed. In the case of Hightower *vs.* Thornton, *supra*, the assignee was not made a party, and the court held that he should be made a party defendant, calling attention to the fact that in that case the company had ceased to exist—its charter was gone—and that the legislature had *ratified* the *appointment* of the *assignee*, on whom (his appointment being so ratified), as standing in the place of the directors *pro hac vice*, this duty would legitimately devolve.

The cases show that a proceeding like the Richmond chancery suit (Exhibit "A") was not only a *proper* proceeding, but the *only* proceeding to which Wm. W. Glenn and the other creditors of the company were entitled.

V.

FOURTH PLEA—DENIAL OF JURISDICTION OF THE CHANCERY COURT OF THE CITY OF RICHMOND TO PASS DECREE OF DECEMBER 14, 1880. THIS QUESTION, ALONG WITH OTHERS, ARISES ON THE FIFTH BILL OF EXCEPTIONS.

The defendant realizes the fact that it is important for him to try and escape the force and effect of the Richmond chancery suit (Exhibit "A") and the decrees therein, and hence urges numerous objections against that proceeding.

FIRST. The defense say that process was not properly served upon the corporation because *the writ had* NO SEAL *attached.* But the CONSTITUTION of Virginia prescribes the manner in which writs in that State shall be attested: "Writs shall run in the name of the *Commonwealth of Virginia* and be attested by the *clerks* of the *several* courts" (art. VI, § 26, Code 1873, p. 89); and all the writs issued in said suit ran in the name of the Commonwealth and were attested by the clerk of the chancery court of the city of Richmond (Rec., 25, 26, 56, 57, 59). It is because of the wording of the State constitution that writs in Virginia have no seal.

SECOND. The defense say process was not served *upon a proper* officer of the company nor by a proper person. The law of Virginia says: "It shall be sufficient to serve any process or notice to a corporation on its mayor, rector, *president,* or other chief officer, or, in his *absence* from the county or corporation in which he resides or *in which is the principal office of the corporation* against or to which the process or notice is, * * * on the *cashier* or treasurer, and, if there be *none such* or he be *absent,* on *a member of the board of directors,* &c.; * * * and if there be no such agent in the county or corporation publication of a copy of the process

or notice, &c., shall together be sufficient. Service on any person under this section shall be *in* the county or corporation *in which he resides*, and *the return shall show this* and state *on whom* and *when* the service was; otherwise the service shall not be valid" (§ 7, ch. 166, Code of Va., 1873, p. 1085). Process was issued against the company on August 5, 1879, to answer both the original bill and the amended and supplemental bill and was duly executed on August 8, 1879. The return of the officer further states that it was "executed *in* the city of Richmond *August* 8, 1879, as to the National Express and Transportation Company, by delivering to Jos. R. Anderson, a director, and M. B. Poiteaux, cashier, of the said company, each a copy of the within subpœna in chancery, *each* of whom is *resident* of said city *of Richmond*, the *president not being a resident* of the city *of Richmond*." (Rec., 56, 57.)

Both Poiteaux and Anderson appeared and filed their answers in the cause (Rec., 58, 62, 63), and whilst they each disclaim the right to answer for the company neither of them deny that they were served officially. The president not being a resident of Richmond, the service on the cashier as such was good service on the company, and there is abundant proof in the record that Poiteaux was cashier (Rec., 58, 105, 106, 125, 126, 127). If he was not, then there was no such officer within the jurisdiction of the court, and the service on a director as such was a good service on the company.

Anderson in his answer (Rec., 62, 63) admits that he had been elected as a director, but states his belief that he had resigned. The record, however, contains ample proof of his being a director and of his acting as such and that he had *never resigned* (Rec., 62, 63, 107, 124, 205, 235, 236). That he never resigned is clear, for *he acted as a director* at the very *last* meeting of the board of directors, which was held on November 1, 1866 (Rec., 235, 236), and this was *after* the last meeting of the stockholders, which was held on

October 29, 1866 (Rec., 107). "Moreover, as the charter provides that 'the president and *directors* of this corporation *shall hold their offices* for one year and *until their successors are chosen*' (Rec., 216), and it not being pretended that any one was ever chosen as his successor, *it is indisputably true that he was a director and was properly served with process*" (Lewis' Adm'r *vs.* Glenn, 84 Va., 954, 969, 970). There was also publication and posting of the writ (Rec., 59 to 62).

But the whole matter of the service of process upon all parties, according to the laws of Virginia, was *adjudicated by the Richmond chancery court itself*, first in its decree of December 14, 1880, which recites that the cause had "been *regularly matured* and proceeded in as to *all* of the defendants" (Rec., 181); and afterwards, on a petition for rehearing, these very questions (both as to whether process was served *on a proper officer* of the company and whether it was served *by a proper person*) being raised, the circuit court of the county of Henrico, to which the cause had been removed from the former court, elaborately reconsidered the whole subject, and *held that the service upon the company was regular in* ALL *respects* (Rec., 266, 267), and from neither of these decisions has there ever been an appeal. Both the court of appeals of Virginia and the court of appeals of Maryland have passed upon these questions, and held that "*this was unquestionably good service upon the company and in every respect a compliance* with the act prescribing the mode of service of process upon corporations." "There can, therefore, be no valid objection to the jurisdiction of the chancery court on the ground that process was not properly served. Indeed, the notification given was not only sufficient to inform the company of the pendency of the suit, but to bind it by the decree that was subsequently rendered in the cause" (Lewis' Administrator *vs.* Glenn, 84 Va., 948; S. C., 6 Southeastern R., 877, 878; Glenn *vs.* Williams, 60 Md., 111, 112, 113).

And in the case of Glenn *vs.* Camden, tried before the late

Chief Justice Waite and Circuit Justice Bond, in the circuit court of the United States for the district of West Virginia, at Parkersburg, in June, 1886, it was attempted to introduce proof that Poiteaux was not cashier; but the court, by the Chief Justice, held that the question of service was adjudicated by the court in the chancery suit (Exhibit "A") and refused to admit any evidence to impeach that decree upon that ground. He said: "The jurisdiction of the chancery court was complete; the question of *its jurisdiction* over this company was *heard* and *adjudicated* by *that court. This very question was litigated and decided in that original suit,* AND THAT DECISION BINDS THIS COURT."

THIRD. It is claimed by the defense that the power to call for unpaid subscriptions was vested in the president and directors and not in the corporation, and that it is not averred in the declaration that either the president or any director was a party to said chancery suit (Exhibit "A"), and that unless they were parties the court had no jurisdiction to decree a call in that case. This is a mistake. As a matter of fact, the president and directors, as well as the cashier, were made parties to that suit in their official capacities, and in their official capacities process was prayed against them and was had against them to answer both the original and the amended and supplemental bills (Rec., 33, 34, 41, and 59 to 62). There was, however, no real occasion to make them parties except to obtain a discovery from them, for it is well-settled law that "*in all charters creating corporations powers conferred upon those who stand in the place of and represent the corporate body are deemed to be conferred upon the corporation* ITSELF."

Weet *vs.* Brockport, 16 N. Y., 170, note.
Conrad *vs.* Ithaca, *Id.*, 159.
Hickok *vs.* Plattsburgh, *Id.*, 161, note.
1 Dillon's Municipal Corporations, 3d ed., pp. 127, 128, § 99; 4th ed., p. 159, § 99.

It is *for this reason* that such a power, whether given to the president and directors or to the stockholders, or to the directors and stockholders together, is, as we have seen, held to be *a corporate franchise.* This Court, however, has in most emphatic language settled and answered this objection in one of these very cases which recently came before it, in which this very point was raised and urged. This Court, after stating the point, said: "But the president and directors stand for the corporation, and it is alleged in the amended petition that the corporation was a party to the amended bill, and that *it was duly served* with process in the cause in accordance with the laws and practice of the State of Virginia. *The corporation* SUFFICIENTLY REPRESENTED *the president and directors in their* OFFICIAL CAPACITY, *in which* ALONE *they were to act in making a call, and it* ALSO, *as held in Hawkins* VS. *Glenn,* SUFFICIENTLY REPRESENTED THE DEFENDANT."

Glenn *vs.* Liggett, 135 U. S., 547, 548.

FOURTH. It is claimed by the defense that the stockholders were not made parties to the Richmond chancery suit (Exhibit "A") in their *individual capacities,* that the substantial relief sought was against them *individually,* and that unless they were parties *individually* the court had no jurisdiction to decree a call against them. The defendant in the case at bar not being a party to that suit in his *individual capacity* says he is not bound by the decrees therein nor liable in this action. Why, we would ask, should the stockholders have been made defendants to said bill in their individual capacities? Where corporate rights and interests are affected in any way those rights and interests should be asserted and defended both at law and in equity in the corporate name (Forbes *vs.* The M. E. & P. R. R. Co., 2 Woods, 331, 332; Blackman *vs.* The C. R. & B. Co., 58 Ga., 189, 190; Farnum *vs.* B. V. M. Shop., 12 Cush. (Mass.), 508, 509; Holyoke B'k *vs.* G. P. M'f'g Co., 9 *Id.,* 584; Lane *vs.* School

District, 10 Metc. (Mass.), 464, 465; Pierce *vs.* Sommersworth, 10 N. H., 375, 376; Bradley *vs.* Richardson, 2 Blatchford, C. Ct., 345). A corporation must appear and answer under its corporate seal (B. & O. R. R. Co. *vs.* Wheeling, 13 Gratt., 62; Brown *vs.* La Crosse R. R. Co., 2 Wall., 301). Now the deed sought to be established and construed was a *corporate* deed, and it merely conveyed *corporate* property. The creditors secured by it were merely *corporate* creditors. The unpaid and uncalled subscriptions were *corporate assets* (Ogilvie *vs.* The Knox Ins. Co., 22 How., 388; Sawyer *vs.* Hoag, 17 Wall., 620; Sanger *vs.* Upton, 91 U. S., 60; Webster *vs.* Upton, 91 U. S., 66; Scoville *vs.* Thayer, 105 U. S., 154; G. P. R'y Co. *vs.* Fitler, 60 Pa. St., 131; Mann *vs.* Pentz, 3 Comstock (3 N. Y.), 422; Payson *vs.* Stoever, 2 Dillon, C. Ct., 432; Marsh *vs.* Burroughs, 1 Woods C. Ct., 469; Adler *vs.* The M. P. B. M'f'g Co., 13 Wis., 61; Ward *vs.* Griswoldville M'f'g Co., 16 Conn., 600). The power to make an assessment and call was a *corporate franchise* (Hurlbut *vs.* Root, 12 How. Pr., 512; Lionberger *vs.* B. S. B'k, 10 Mo. App., 507; G. P. R'y Co. *vs.* Fitler, 60 Pa. St., 132; The W. C. & P. R. R. Co. *vs.* Thomas, 2 Phila., 308, 309).

Only corporate rights and interests were sought to be affected and the stockholders in their individual capacities were neither *necessary* nor *proper* parties. In bankruptcy proceedings, upon the mere petition of the assignee in bankruptcy the bankruptcy court can decree an assessment and call upon the stockholders *without* having them before the court in their *individual* capacities and *without* giving them *any notice*, and in a suit by the *assignee* upon such call *the stockholders are held liable* (Upton *vs.* Hansbrough, 10 Nat'l B'k'cy Reg., R. 376, 377, 378; Pullman *vs.* Upton, 96 U. S., 328; Webster *vs.* Upton, 91 U. S., 65, 71; Scoville *vs.* Thayer, 105 U. S., 143 to 147).

The doctrine which this Court laid down and has since adhered to is as follows: "It was *not necessary* that the *stockholders* should be *before the court* when it (the assessment and

call) was made. * * * As a stockholder she (the defendant) was an *integral part of the corporation. In the view of the law she was before the court in all the proceedings touching the body of which she was a member"* (Sanger *vs.* Upton, 91 U. S., 57 to 62).

This Court has applied the same rule to an order made by the Comptroller of the Currency under § 15 of the national bank act (*id.*; Kennedy *vs.* Gibson, 8 Wall., 505; Casey *vs.* Galli, 94 U. S., 677). The bankruptcy court acts in such cases "not in pursuance of any *express* provision of the bankrupt law, but by *analogy* to the powers and proceedure of *a court of equity"* (Glenn *vs.* Williams, 60 Md., 118; Hawkins *vs.* Glenn, 131 U. S., 330; Sanger *vs.* Upton, 91 U. S., 61, 62; Upton *vs.* Hansbrough, 10 Nat'l B'k'cy Reg., R. 375, 376).

And the authorities conclusively show that a *court of chancery* can, at the instance of corporate creditors or their representatives, *decree an assessment and call upon the stockholders* where the *corporation* and *its creditors* are *alone* before the court, without having the stockholders in their *individual* capacities parties to the suit, *they* being *represented* by the *corporation*, and without giving the stockholders in their *individual* capacities *any actual notice*, and that the stockholders can be sued upon the assessment and call *so made* and held liable thereon (Howard *vs.* Whitman, receiver, 29 Ind., 559, 560; Glenn *vs.* Williams, 60 Md., 115 to 118; Vanderwerken *vs.* Glenn, 85 Va., 9; S. C., 6 Southeastern Rep., 807, 808; Lewis' Adm'r *vs.* Glenn, 84 Va., 947; S. C., 6 Southeastern Rep., 879; Howard *vs.* Glenn, 85 Ga., 260; S. C., 11 Southeastern Rep., 611; Hamilton *vs.* Glenn, 85 Va., 903, 904, 905; Hambleton *vs.* Glenn, 13 Va. Law Journal, 249; Hawkins *vs.* Glenn, 131 U. S., 329 to 332; Glenn *vs.* Liggett, 135 U. S., 543, 544; Glenn *vs.* Taussig, *id.*). The bill would have been demurrable if the stockholders in their *individual* capacities had been made parties to it. In the earliest case of this kind a bill was filed by creditors against a *company* and certain of its

members for an assessment and call upon the members. The court below *dismissed* the bill. The *creditors appealed* to the Lords. Their lordships *left* the *dismissal* to stand as to the *individual members*, but ordered "that the dismission for so much as concerns the said company be and do stand reversed," and then, proceeding against the company *alone*, the court went on and *itself decreed* "an *assessment and call* upon the members" (Dr. Salmon *vs.* The Hamborough Co., 1 Cases in Ch'c'y, 204, 205, 206). This case is cited and approved by the highest courts of Maryland and Virginia in Glenn *vs.* Williams, *supra*, and Lewis' Adm'r *vs.* Glenn, *supra*, and by this Court in Sanger *vs.* Upton, 91 U. S., 61, 62.

Even if the corporation were treated as *dead* or *dissolved* or *expired* the result would be the same under the express provisions of the Virginia law (Code of Va. of 1873, ch. 56, § 31, which is identical with § 30, ch. 56 of the Code of Va. of 1860). The stockholders would still *not* be proper parties *individually;* as *integral parts* of the corporation *they* would still be *represented* by *it*, for that law in effect declares that the proceedings against it shall be the same in such a case whether it be *dead* or be a *live* and *going* concern. The members of a corporation, *by becoming members*, are held to have accepted the law of the State which created it and where it exists and to have agreed to the provisions of the law of its domicile, and, among other things, to have agreed to be sued and served with process in the corporate name and in accordance with that law, and when so sued and served are held to have agreed to be bound thereby, and will not be heard to deny the jurisdiction which they have accepted and invoked. This on the ground of estoppel. They are bound by their contracts (Vallée *vs.* Demergue, 4 W. H. G., 4 Exch., 289; Bank of Australasia *vs.* Harding, 67 E. C. L., 660; Bank of Australasia *vs.* Nias, 71 E. C. L., 717; Copin *vs.* Adamson, L. R., 9 Exch., 345; Rousillor *vs.* Rousillor, L. R., 14 Ch., Div. 351; Lafayette Ins. Co. *vs.* French, 18 How., 404; Hawkins *vs.* Glenn, 131 U. S., 332). This

point was expressly made in the Richmond chancery suit itself (Exhibit "A"), and it was so decided by Judge Welford on the application of certain stockholders petitioning for themselves and other stockholders, and attacking the proceeding in that suit (Exhibit "A") (see Rec., 266), and from his decision there was never any appeal. Besides, Hamilton and other stockholders petitioned to be made parties *to that same suit*, and made a vigorous attack upon it. Their petition was dismissed, and they appealed. In the court of appeals this point was strenuously urged, but that court, like Judge Welford, cited the provisions of the Virginia law and decided against them (Hamilton *vs.* Glenn, 85 Va., 903, 904, 905; Hambleton *vs.* Glenn, 13 Va. Law Journal, 249).

This Court also has passed upon this aspect of the case, citing the provisions of the Virginia law, and the case of Hambleton *vs.* Glenn, *supra*, and approving of the decision in that case, and has held that even if the corporation were to be treated as a *dead* and not as a *live* or *going* concern, yet still the stockholders were neither *necessary* nor *proper* parties to the suit in their *individual* capacities, and *that the stockholders as integral parts of the corporation were represented by the corporation* even under such circumstances according to the terms and provisions of the Virginia law (Hawkins *vs.* Glenn, 131 U. S., 329, 331, 332).

FIFTH. It is further urged by the defense that the chancery court of the city of Richmond had no power or jurisdiction to *remove* the *old* trustees and *substitute* the said *John Glenn* in their *place and stead*, and that even if said court could do so at all it could not by virtue of its *mere* decree clothe the *new trustee* with the *rights, powers, and duties* of the *old trustees*, but could only do so by compelling the *old* trustees to *convey* to the *new* trustee.

But this point is founded upon an obvious misunderstanding of the constitution and laws of Virginia.

"The State shall be divided into sixteen judicial circuits, as follows: * * *

"7. The county of Henrico and the city of Richmond shall constitute the seventh circuit" (Const. of Va., art. 6, § 9, Code 1873, p. 85). In the seventh judicial circuit *two circuit courts* were established—*one* for the *county of Henrico* and the *other* for the *city of Richmond*—the establishment of a *circuit court* for every *county* and for every *corporate city or town* in *each* of said judicial circuits being authorized by said constitution, the jurisdiction of which tribunals it declares "shall be regulated by law," &c. (Const. of Va., art. 6, § 1, Code 1873, p. 84). The *territorial* jurisdiction of the *circuit court* of the *county of Henrico* and of the *circuit court* of the *city of Richmond* are wholly *separate* and *distinct*. The one had no jurisdiction *within* the city of Richmond; the other no jurisdiction *outside* of it. To the *circuit court of the county of Henrico* (as to the circuit courts of other counties in the State) is given general chancery jurisdiction; and also *special statutory jurisdiction* on motion to substitute a *new* trustee for an *old* trustee and to invest the *new* trustee with all the *rights, powers, and duties* of the *old* trustee (Code of Va. of 1860, ch. 158, § 5; Code of Va. of 1873, ch. 155, §§ 1, 2; Code of Va. of 1873, ch. 174, § 8; Acts of Assembly of Va. of 1874–'5, p. 423, (which is an act passed on March 31st, 1875, re-enacting and *amending* said § 8 of ch. 174 of said Code of 1873, in respect to the substitution of trustees).

Concurrent *chancery jurisdiction* had existed in the *county courts*, but was repealed and *transferred* to the *circuit* courts (Code of Va., 1860, ch. 157, § 16; Code of Va., 1873, ch. 154, § 7; Acts of Assembly of 1872–'3, ch. 395, § 9, p. 383, and ch. 396, § 5, p. 384). All the *general chancery jurisdiction;* and all the *special statutory jurisdiction, on motion,* to remove trustees and substitute another in their place and to invest the *new* trustee with all the *rights, powers, and duties* of the *old* trustees conferred upon the *circuit court* of the county of *Henrico* and the *circuit courts* of the other counties was given

to the chancery court of the city of Richmond by the following acts: Code of Va., 1873, ch. 155, §§ 5, 6, and Acts of Assembly of Va. of 1874, pp. 224, 225, which on April 15, 1874, amended and re-enacted said § 6, ch. 155, of said Code of 1873, so as to make it declare, among other things, that *the statutes* THEN *in force* OR WHICH MIGHT THEREAFTER BE ENACTED, *devolving any duty or conferring any power or jurisdiction upon the circuit courts* or the *judges* thereof, respectively, SHOULD BE CONSTRUED AS INCLUDING THE CHANCERY COURT OF THE CITY OF RICHMOND and the *judge* thereof, respectively, except as to matters of common law or criminal jurisdiction." The *territorial* jurisdiction of *the chancery court of the city of Richmond* was confined to *said city*. Its establishment *within said city* was expressly authorized by the constitution of the State and its jurisdiction to be prescribed by law (Code of Va., art. 6, § 14; Code of Va., 1873, p. 87). On the other hand, the law of Virginia expressly provided that the *circuit court* of the *city of Richmond* should have no chancery jurisdiction (Code of Va. of 1873, ch. 155, § 4); that the chancery court of the city of Richmond had full and ample *general chancery jurisdiction* and *special statutory jurisdiction, on motion*, to remove the old trustees and substitute a new trustee in their place and to invest the new trustee with all the rights, powers, and duties of the old trustees, is perfectly manifest from an examination of the above provisions. But it is contended that the *special* jurisdiction can be exercised *only* upon a *technical motion* and *not by a bill in equity*. Why? we ask. The bill states the grounds for relief and prays for the removal and substitution and makes all parties in interest defendants (Rec., 42). It is the most formal, the most regular, the most comprehensive motion possible to be made—a subsisting and continuing motion from the day the bill was filed. When process has been served and all parties are before the court, with full notice of the relief asked, it would be mere sticking in the bark to say the proceeding was null and void because the notice had

been *more formally* given and the relief asked more fully stated than required by law. There being a decree *pro confesso* as to the *company* and *by consent* as to the trustees, who could thereafter object to the action of the court? (Thompson *vs.* Wooster, 114 U. S., 104.) There is great liberality in respect to pleading under the Virginia practice. Substance is never sacrificed to form. An answer may be treated as a cross-bill (Mettert *vs.* Hogan, 18 Gratt., 231). A bill of review as a petition for rehearing (Ambrose *vs.* Keller, 22 Gratt., 769; Sands *vs.* Lynham, 27 Gratt., 292), and *vice versa* (Crickhard *vs.* Crickhard, 25 Gratt., 411), a statutory motion may be treated as a petition for a rehearing (Kendricks *vs.* Whitney, 28 Gratt., 646); and *a bill may be treated as a statutory motion and perform all of its functions* (Bower *vs.* Hill, 18 Gratt., 364); and so may a petition (R. R. Co. *vs.* R. R. Co., 19 Gratt., 596). In Shelton *vs.* Jones, 26 Gratt., 891, there was the greatest *informality* and irregularity, but the trustee having appeared and *consented to his removal* it was held that the court being a court of *general jurisdiction* its action, though *irregular, was not void and could not be collaterally assailed.* The court had ample power to work a complete substitution by its *mere* decree, without any conveyance, both by virtue of its *general* chancery jurisdiction and also, as we have shown, by virtue of its special statutory jurisdiction, and what the court did was simply to exercise its general and special jurisdiction at the same time (Lewis' Adm'r, *vs.* Glenn, 84 Va., 973, 974; S. C., 6 Southeastern R., 866; Glenn *vs.* Williams, 60 Md., 119, 120; Glenn *vs.* Dodge, 3 Central Rep., 283; Glenn *vs.* Busey, MacArthur and Mackey's R., 454; S. C., 3 Central R., 283, note). The last two cases were decided in this District, and, though in the last the general term decided against the plaintiff on another ground, yet on this point it agreed with the court below (Glenn *vs.* Busey, 5 Mackey, 244; S. C., 15 Wash Law R., 38). The removal and substitution were but incidental to the other relief, and the court had *general jurisdic-*

tion for *all* the relief prayed. The decree, therefore, being passed upon full *statutory jurisdicton*, engrafted upon *general jurisdiction*, the established rule as to presumptions not inconsistent with the record prevails in favor of the jurisdiction exercised, and the proceeding cannot be collaterally attacked, though silent as to the *mode* in which jurisdiction was acquired. The decree proceeds in the very words of the statute. (See Code of Va., 1873, ch. 174, § 8, and Acts of Assembly of Va. appd. Apr. 15, 1874, ch. 202, and the Record, p. 182.) The substitution was as complete under the Virginia act as the substitution under the New Jersey act in Yard *vs.* Lavison, 39 N. J. Eq., 386, 388, 389, in which, though no allusion was made to the act in the decree of appointment, the court held that the trustee appointed was *clothed* by the *act* with *all the powers* of the trustee *in whose stead he was appointed.* The decision of this Court is in accordance with the decisions above mentioned (Hawkins *vs.* Glenn, 131 U. S., 328). We submit that the plaintiff fully sustained his side of the issue joined upon the defendant's *fourth plea* (Rec., 17), and that the *fifth* bill of exceptions should have been sustained, so far as the question of the jurisdiction of the chancery court of the city of Richmond is concerned. As to the Reynolds suit (Rec., 303 to 346), which the defense claim bears upon this question, we will consider it further on and show that it cuts no figure in the case. The other questions raised by the fifth bill of exceptions will be discussed hereafter.

VI.

EFFECT OF RICHMOND CHANCERY SUIT.

The amount of the assets and of the liabilities; the validity of the deed of assignment; its construction and effect; that it assigned the uncalled subscriptions, but not the calling power; that the only available property consisted

of the uncalled subscriptions; the necessity of making first one and afterwards a second assessment and call, and the amount of each; that the amounts called for by each call had not been previously called for; the removal of the old trustees and the substitution of a new trustee in their place; the clothing of the substituted trustee with all the rights and powers and the charging him with all the duties of the old; the making of both calls against the stock and stockholders severally and not jointly, and the making of both of them payable to the substituted trustee, and the authority to the substituted trustee to collect and receive the same and to take such prompt steps to that end, by suit or otherwise, and in such jurisdictions as he might be advised; the regularity and sufficiency of the service of process upon the defendants, and especially upon the corporation, and that the mode of serving process upon the corporation was the same whether it was to be regarded as dead or expired or as a going concern—all of these are matters and questions which were heard, passed upon, and adjudicated in the Richmond chancery suit (Exhibit "A"). They are all *res judicata*. Any and all defenses which *might have been made in that suit* against the decrees of December 14, 1880, and March 26, 1886, are *concluded* by said decrees and *cannot* be set up in this action (Dimock *vs.* Copper Co., 117 U. S., 566). Judge Alvey correctly stated the law when he said: "It must be recollected that this court *cannot sit in review of the decree of the Virginia court* for the *correction* of *errors* or *irregularities* that may have been committed in the exercise of a *competent jurisdiction*. If there be such errors or irregularities in the proceedings they could possibly have been the subject of a *direct appeal* from the decree, but they cannot be allowed to affect the validity of the decree on a *collateral* proceeding like the present" (Glenn *vs.* Williams, 60 Md., 111, 112, 113; see also Randall *vs.* Howard, 2 Black., 589). So this Court held and added: "We think it cannot

be doubted that a decree against a corporation in respect to corporate matters, &c., * * * *necessarily binds its members* in the absence of fraud, and that this is *involved in the contract created in becoming a stockholder"* (Hawkins *vs.* Glenn, 131 U. S., 332). The decrees in the Richmond chancery suit (Exhibit "A") *could not*, indeed, be assailed in any *other* proceeding in another court, *even for fraud* (Nawgue *vs.* Clapp, 101 U. S., 551). In Hambleton *vs.* Glenn, 72 Md., 343 to 350; S. C., 20 Atlantic R., 115, and Hambleton *vs.* Glenn, 72 Md., 353; S. C., 20 Atlantic R., 122, and Howard *vs.* Glenn, 85 Ga., 238; S. C., 11 Southeastern Rep., 610, the stockholders tried to set up fraud, but it was held to be no defense.

The conclusive answer to any attempt to attack on *any* ground, *even on the ground of fraud*, anything that was done in that original suit (Exhibit "A") is found in a late decision of this Court (in which the question was fully and carefully considered) and consists of the fact that not only the STOCKHOLDERS as *integral parts* of the corporation were *parties* to that cause, but, further, *that that cause* IS STILL OPEN and PENDING, and that consequently if *stockholders* wish to make any attack upon *that* proceeding they *can* and MUST *do so in that original suit* and *cannot* do so in *this present action* or in *any suit*, SAVE THAT ORIGINAL SUIT (Exhibit "A") ITSELF (Graham *vs.* R. R. Co., 118 U. S., 161, 172, 174, 175, 177, 178, 179). In the Richmond chancery suit the proceeding is as completely OPEN AND PENDING and in it the stockholders are as completely represented by the corporation as was the case in the proceeding which was attacked in Graham *vs.* R. R. Co., *supra*, and if, for the reasons mentioned, fraud furnished no ground of relief to the stockholders in that case upon *a direct attack* it is even clearer that, for the same reasons, it could not be set up against the Richmond chancery suit (Exhibit "A") in a *collateral* action like the case at bar.

VII.

DECREE OF JULY 21ST, 1883—THIRD BILL OF EXCEPTIONS.

But the defendant says that even though the stockholders be bound by the judicial proceedings in the Richmond chancery suit (Exhibit "A"), yet that the decree of July 21, 1883, therein (Rec., 228), to the effect that if any stockholder should pay *a certain per cent.* upon *his* subscription *within a certain time* such payment would be sufficient to *discharge* all liability on *his* stock, in some way constitutes a defense to this action. That same decree was set up as a defense by a stockholder in Georgia in a suit on the 30 per cent. call, first, as *limiting* the recovery which could be had against him to the per cent., &c., in said decree specified; second, as *discharging* him altogether, because (though he has not himself paid or tendered the amount in time) some other stockholders had, within the time limited, accepted the compromise offered by said decree and complied with its terms and provisions. Both pleas were held bad, the court saying as to the one, "*To avail himself of that decree the defendant should have paid or have offered to pay the amount specified in the decree,*" and saying as to the other, "*The defendant is bound to the creditors upon his subscription to the capital stock of this company, and whether other stockholders were released or not is a matter with which he has no concern*" (Howard *vs.*, Glenn, 85 Ga., 260, 261, 262; S. C., 11 Southeastern Rep., 612). This case is in point, for in the case at bar it was *not proved nor is it pretended that there was* by the defendant or by any one who was liable on his stock either *any acceptance* of the decree of July 21, 1883, or *any payment* or any *tender* or *offer of payment* under that decree *within the time* therein prescribed (or afterwards) of the *amount* therein prescribed to be paid. Never *at any time* did the defendant express a willingness to accept or comply with the terms

and provisions of the decree of July 21, 1883. This question also came before the court of appeals of Maryland in a suit on the 30 per cent. call, and that court held that the decree of July 21, 1883, furnished no defense, and said: "They (the defendants) allege that because some of the stockholders did elect to accept the terms of settlement offered and paid the amount specified, thereby *other* stockholders, &c., were released from all further liability. *But is that the legal effect of this compromise decree*, making offer of terms of settlement to every one alike who were liable on the stock of the company? *We think not.* The assessment made by the decree of December 14, 1880, was of a certain per cent. upon *each and every* share of stock, and *each* person liable therefor became *severally* liable and *not jointly* with others" (Hambleton & Co. *vs.* Glenn, 72 Md., 340 to 343; S. C., 20 Atlantic Rep., 117, 118). The decree of March 26, 1886, makes a call on *each and every* share of stock and is against the stockholders and *each and every* of them and requires them *severally* to pay the *several* amounts thereby called for to the substituted trustee (Rec., 287). In these respects it is precisely like the decree of December 14, 1880 (Rec., 199), and the case of Hambleton *vs.* Glenn, *supra*, is therefore in point. But there is a later case in Maryland which is directly in point. It was a suit against the same stockholder, Hambleton, upon the 50 per cent. call made by the decree of March 26, 1886, He pleaded the decree of July 21, 1883, and that *certain* stockholders *had complied* with its terms and provisions and *had been released*, and that by reason of such release of said shares and shareholders the decree of March 26, 1886, *did not operate upon or affect* said stockholders and shares of stock *released* prior to the passage of said decree and *did not make* a call or assessment *bearing equally and impartially* upon all the stockholders and shares of stock alike, and that by reason of the facts and release aforesaid the 50 per cent. call or assessment in that case sued for *was unequal, unjust, and*

illegal. The case is on all-fours with the case at bar. The court held the plea bad, and said: "If the release of stockholders by the plaintiff *was without warrant of law and void*, either as against creditors or other stockholders, such release will *not avail* as a *discharge* of the stockholder, *and the defendants cannot be affected thereby.* BUT CLEARLY THIS COURT HAS NO POWER TO REVIEW AND REVERSE THE DECREE OF THE 26TH OF MARCH, 1886, any more than it had to review and reverse the decree of December 14, 1880. It may even be conceded that there was error in the passage of the decree, but that error *cannot be corrected by this court in a* COLLATERAL PROCEEDING. The appropriate *remedy* for the correction of the error, if such it be, *should have been sought in the jurisdiction where the decree was rendered*" (Hambleton & Co. *vs.* Glenn, 72 Md., 353, 354; S. C., 20 Atlantic Rep., 121, 122.) The decree of July 21, 1883, states that it does not suspend the decree of December 14, 1880 (Rec., 228), and the decree of December 9, 1884, directed the trustee to enforce the decree of December 14, 1880, as if the decree of July 21, 1883, had never been passed (Rec., 234), and the decree of March 25, 1885, declared that the decree of December 14, 1880, was in full force as when first entered (Rec., 273), and all of them were prior to the decree of March 26, 1886 (Rec., 287). If the decree of July 21, 1883, and the discharge of other stockholders under it could by any conceivable possibility have furnished any defense to the defendant, it could only have been matter of defense against the *rendition* of the decree of March 26, 1886, and no defense to its rendition can constitute a defense to a suit upon it. What is said in Hambleton & Co. *vs.* Glenn, 72 Md., 353, 354, conclusively shows that the third bill of exceptions should have been sustained.

VIII.

LACHES—LIMITATIONS—THIRD PLEA—SECOND BILL OF EXCEPTIONS.

But the defense say that the plaintiff cannot recover on account of laches, and also that the cause of action is barred by the statute of limitations of three years in force in this District. This point was raised upon the defendant's third plea (Rec. 17.)

FIRST. Let us consider the question of *laches*. It is claimed by the defense that the creditors should have obtained a call *before* they did. The original bill in the suit, Exhibit "A," *prayed for process* against the company and other defendants (Rec., 34), and it was filed December 4, 1871 (Rec., 27). Had process never issued this would merely have been the fault or omission of the court or of its officers and not of the plaintiff in the case. The PRAYER *for process* was the *impetration* of the writ, and the suit was *duly instituted* when the bill containing such a *prayer* for process was filed (Percell *vs.* Blannerhassett, 3 Jones and Latouche, 45). The trustees, the officers of the corporation, and the stockholders set the creditors at defiance and obstructed them at every point and in every way that they could, denying them access to the books of the company and giving none of the information necessary to enable the creditors to do anything and doing nothing themselves to obtain the relief which was so much needed by all the creditors (Rec., 39 to 41; Glenn *vs.* Williams, 60 Md., 124). Process was issued against and served upon the corporation, its officers, and the trustees to appear and answer the original bill and the amended and supplemental bill (Rec., 56, 57), and there was also publication and posting of the writ (Rec., 59, 60, 61), and *no delay in the cause* from the *impetration* of the *writ* to the *rendition* of the *decree* can be charged against the plaintiff (Scoville *vs.*

Thayer, 105 U. S., 157). The question of *laches*, however, is effectually disposed of by still later decisions in some of these very cases, in which this Court said: "The decree of the Richmond chancery court determined the validity of the assessment, and that *the lapse of time between the failure of the company and the date of the decree did not preclude relief by creating a bar through* STATUTES OF LIMITATIONS or the application of the DOCTRINE OF LACHES." (Hawkins *vs.* Glenn, 131 U. S., 332; Glenn *vs.* Liggett, 135 U. S., 544, 545; Glenn *vs.* Taussig, *id.*)

SECOND. Let us consider the question of the statute of limitations. The charter provides that "the capital stock of said company shall be five millions of dollars and shall be divided into shares of ($100) one hundred dollars each" (Rec., 215), and, by the law of Virginia, "upon every subscription for shares in any joint-stock company, &c., there shall be paid upon each share two dollars at the time of subscribing *and the residue thereof as required by the president and directors*" (Code of Va., 1860, ch. 57, § 3; Code of Va., 1873, ch. 57, § 3; Rec., 301, 302). It is expressly admitted and agreed by stipulation "that the defendant, J. Carter Marbury, became *an original stockholder* in the company and was *an original subscriber* therein for the 100 shares of stock mentioned in the declaration, for which stock he received the certificate and has paid 20 per cent. only on his said subscription" (Rec., 19, 20, 298, 299). He is sued in this action for the 50 per cent. of his subscription which was assessed and called for by the decree of March 26, 1886 (Rec., 287). This amount had never been previously called for, and the decree of March 26, 1886, so adjudges (Rec., 287). As a stockholder he is bound by this decree. The plaintiff's cause of action did not, therefore, accrue against the defendant until the decree of March 26, 1886. Where a stockholder's subscription is to be paid "*as required by the president and directors*" it has always been held that *the corporation cannot itself sue a stockholder* for any part

of his unpaid subscription *without* first making *an assessment and call for the same* (Sinkler *vs.* The Turnpike Co., 3 Pa. (Penrose & Watts), 156; Brown *vs.* Union Ins. Co., 3 La. Ann., 183; Bingham *vs.* Rushing, 5 Ala., 406; Mann *vs.* Pentz, 3 Comst. (3 N. Y.), 422; Robertson *vs.* Sibley, 10 Minn., 329). Nor can a sheriff on a judgment and execution against a corporation *levy* on the unpaid subscription and *sue* the stockholder for the same *without an assessment and call first being made therefor* (Robertson *vs.* Sibley, 10 Minn., 327 to 330). Nor can judgment creditors of a corporation garnishee at law the stockholder's *unpaid* subscription *before* there is *an assessment and call* for the same, though the *called part* is subject to such garnishment by them (Bingham *vs.* Rushing, 5 Ala., 406; Brown *vs.* Union Ins. Co., 3 La. Ann., 182, 183). And where the corporation had made an assignment for the benefit of its creditors, but *had not called for the unpaid subscriptions*, and the assignees *omitted* to go into equity to obtain an assessment and call; and, without getting any equitable relief or assistance, undertook *themselves* to make an assessment and call, and sued the stockholders thereon at law. The court, treating the assessment and call made by them as being made without authority, decided against the plaintiff on the ground that the making of an assessment and call was a "*condition precedent*" which must be performed *before* the cause of action could arise (Hurlbut *vs.* Root, 12 How. Pr., 511, 512); and so, in a similar case, the court—Miller, J.—held that a receiver could not sue a stockholder for his unpaid subscriptions in an action at law on the contract without "a call or assessment or something standing in the place thereof and equivalent thereto, either by the company or by a proper court, in order to make the defendant liable" (Chandler *vs.* Siddle, 3 Dillon C. Ct., 480; S. C., 10 Nat'l B'k'cy Reg. R., 238, 239). And the same is true of a receiver under the national banking acts. (Kennedy *vs.* Gibson, 8 Wall., 505.)

In all of these cases in which the corporate creditors failed

they had proceeded *in a court of law* against the stockholder for his unpaid subscriptions *without previously getting from the company or from a court of equity an assessment and call.* The essential thing, however, is *not* the *mere forum,* but the *getting* of an assessment and call as *a condition precedent.* In Mann *vs.* Pentz a receiver of a corporation filed *a bill in chancery* against a stockholder to compel him to pay up the balance of his subscription, which had *not been called for* by the *company* or by any *court.* The creditor's bill under which said receiver was appointed *not* being a proceeding either *to compel or to make a call* upon the stockholder, it was objected that the receiver had no other or different title under such a bill than a receiver at common law, and so *could not make calls* or recover balances *not previously due;* that the stockholders, as such, were not indebted to the company *until a call* was made upon them; that their agreement was to pay *when called upon* as stockholders, and that such *call* was a *prerequisite* to liability, and that the defendant had paid all that had been *called or required* by the company. The court held that the receiver had no right to sue the stockholder *in equity* any more than at law without *first* obtaining a call from the company or from a proper court (Mann *vs.* Pentz, 3 Comst. (3 N. Y.), 422, 423). To the same tenor and effect is the precisely similar case of Adler *vs.* The M. P. B. M'f'g Co., 13 Wis., 64. The Maryland court laid down the settled doctrine, "*Until* a regular *call* was made there was *no unconditional liability* on the part of the stockholder to pay." Until then he could not know *when* to pay or *how much* he would be required to pay. The subscription, therefore, was *conditional* as to the *times* and *amounts* of payment, and consequently there was *no fixed obligation* of the stockholder to pay and *no right of action* against him *until* an assessment and call made either by the president and directors or by the order of a court of competent jurisdiction. It is for the amount of the assessment made that the right of action accrues, and not for the whole

balance of the unpaid subscriptions, unless the whole amount be called for, *and it is only from the time of the assessment and call made that the statute runs in favor of the defendant*" (Glenn *vs.* Williams, 60 Md., 122, 123, 124). The decisions of this court are clear and explicit and settle the question. "He (the stockholder) was under *no* obligation to pay anything until the amount necessary for him to pay was at least approximately *ascertained. Until then his obligation to pay did not become complete.* * * * No action at law *would lie* to recover the unpaid balance due on the stock *until this was done.* * * * In short, *until an* UNCONDITIONAL *liability to pay something is fastened on the debtor, no action can be maintained against him, and the statute of limitations does not begin to run in his favor*" (Scoville *vs.* Thayer, 105 U. S., 153, 155, 156, 158, 159). "As the trustees could not collect except upon call, and had themselves no power to make one, rendering resort to the president and directors necessary, or, failing their action, then to the courts, *it is very clear that the statute of limitations could not commence to run until after the call was made*" (Hawkins *vs.* Glenn, 131 U. S., 333; Glenn *vs.* Liggett, 135 U. S., 545; Glenn *vs.* Taussig, *id.*) And the following cases are to the same effect: Glenn *vs.* Howard, 81 Ga., 385, 386; S. C., 8 Southeastern Rep., 637; Lewis, adm'r, *vs.* Glenn, 84 Va., 986, 987; S. C., 6 Southeastern Rep., 886; Vanderwerken *vs.* Glenn, 85 Va., 14; S. C., 6 Southeastern Rep., 808; Hamilton *vs.* Glenn, 85 Va., 906; Hambleton *vs.* Glenn (same case), 9 Southeastern Rep., 131; S. C., 13 Va. L. Jur., 245; Glenn *vs.* Semple, 80 Ala., 161 to 164; Glenn *vs.* Foote, 36 Fed. Rep., 828). The statute of limitations, it is clear, did not commence to run against the plaintiff's cause of action till the call and assessment were made by the decree of March 26, 1886, and as the suit was brought on March 22, 1889, the statute of limitations of three years constitutes no defense to this action. The plaintiff, therefore, sustained his side of the issue joined upon the defendant's *third plea* (Rec., 17), and the *second* bill of

exceptions should have been sustained. The *Reynolds suit* (Rec., 303 to 346) is claimed by the defense to bear upon this question. We will now consider it and show that it does not.

IX.

REYNOLDS' SUIT—FIRST BILL OF EXCEPTIONS—WHETHER THE REYNOLDS SUIT AFFECTS THE QUESTIONS OF JURISDICTION AND LIMITATIONS—IT IS INADMISSIBLE IN EVIDENCE.

The defense say that the Reynolds suit (Rec., 303 to 346) constitutes a defense to the present action.

FIRST. The defense claim that the decree of December 31, 1866 (Rec., 332 to 334), appointing a receiver, amounted to an assessment and call, and that the statute of limitations commenced to run from that date or from January 12, 1867, when said receiver's bond was approved. (Rec., 336.)

SECONDLY. The defense claim that the proceedings in the Reynolds suit rendered everything in the Richmond chancery suit (Exhibit "A"), from its institution to and inclusive of the final decrees therein, *null and void*. We deny both of these propositions, and we assert that the Reynolds suit was absolutely *inadmissible* in evidence and should have been *excluded* on plaintiff's objection. That suit was a stockholder's suit against the company and its officers and directors to restrain acts alleged to be *ultra vires* and to prevent alleged *abuses* of administration. It prays for an injunction and for a receiver, and that any money *due* said company might be collected by said receiver (Rec., 307). *The bill does not pray for an assessment or call or seek any such relief.* At that time *only* 20 *per cent.* of the subscriptions *had been called* for, and *the balance* remained *uncalled*. Only the *called* part was *due* the company. The answers denied and swore away every material allegation (Rec., 315 to 326); yet

the court, without any proof, granted an injunction (Rec., 327) and appointed a receiver (Rec., 332 to 334). The order appointing the receiver is in the usual form, and contains these words: "And if there shall be any sums *due* upon the shares of the capital stock of the said company the said receiver will proceed to collect and recover the same," &c. (Rec., 333). This language gave the receiver no powers beyond those of a common-law receiver, and, as held in Mann *vs.* Pentz, 3 Comst. (N. Y.), 422, 423, and Adler *vs.* The M. P. B. M'f'g Co., 13 Wis., 64, he could not sue for *unpaid* subscriptions *without first obtaining an assessment and call.* The defense claim that this language *itself* amounted to an assessment and call. As in the two cases last mentioned, the bill was *not* a bill for such relief, and in Glenn *vs.* Macon *the court held it not to be a call,* saying:

"My opinion is *that there was here no action of the court making what is termed a 'call' or assessment upon the stockholders*" (Glenn *vs.* Macon, 32 Fed. Rep., 8). *We by no means admit,* what is said to have been conceded in that case, that if the Reynolds suit levied an assessment limitations in *this* action would commence from *that* assessment. We merely cite the case to show that nothing in the Reynolds suit amounted to an assessment or call. The Reynolds suit was finally dismissed (Rec., 345). Even if the decree of December 31, 1866 (Rec., 333), had made an assessment or call the dismissal (Rec., 345) necessarily put an end to every consequence of that decree. Besides, the Reynolds suit was not pleaded or set up as a defense in the Richmond chancery suit (Exhibit "A"). If it had made a call or constituted any defense against the decrees in that case it should have been pleaded and set up in that case as a defense against the *rendition* of the decrees therein. The decree of March 26, 1886, expressly adjudicates that the amount now sued for *remained uncalled till the rendition of that decree,* viz., March 26, 1886. The question is therefore *res judicata.* The defendant is concluded by *that* decree. In this *collateral* pro-

ceeding to *enforce* the decree of March 26, 1886, *no defense against its rendition can be interposed.* The decree of March 26, 1886, is a bar against such a question being set up in this case (Dimock *vs.* Copper Co., 117 U. S., 566; Naugue *vs.* Clapp, 101 U. S., 551; Randall *vs.* Howard, 2 Black, 589). Moreover, the Richmond chancery suit (Exhibit "A") is still *open and pending*, and consequently if the defendant is entitled to any relief against what was done in that case *he must go into that suit to obtain it.* Such is the decision of this Court in Graham *vs.* R. R. Co., 118 U. S., 161, 172, 174, 175, 177, 178, 179. See also Naugue *vs.* Clapp, 101 U. S., 551. In 1870 Kelley, another stockholder, came into the Reynolds suit and filed an amended and supplemental bill (Rec., 337), but it *prayed for no process* against any defendant; *no process was ever issued upon it*, and *nothing* whatever done to further prosecute the case (Rec., 344). The receiver was appointed *solely* under the *original* bill, and Reynolds, the original complainant, had *died*, and the *suit abated* before the amended and supplemental bill was filed, as stated therein. (Rec., 339.)

The case *had abated* and was dead when the amended and supplemental bill was filed, on August 22, 1870, and after its filing ten years elapsed without another thing being done. On December 10, 1880, the receiver reported to the court '*that he had only obtained possession of two freight cars*, which he had sold for less than $1,000 (not as much as his expenses); *that none of the creditors had submitted their claims to him; that for many years there was no demand for any action by him; that none of the stockholders or officers of the company had given him any assistance, but that all had appeared to be adverse to his taking action in the matter, and that neither the plaintiff nor any one for him had taken any action or asked for any action for at least ten years; that he was informed, however, that some of the creditors desired to proceed to the enforcement of their claims by another proceeding; that, as receiver, he desired to be discharged*' (Rec., 344, 345). Upon this report being filed, on motion of

the defendants, the court, on December 10, 1880, decreed that *the order of the 31st of December*, 1866, &c., appointing a receiver in this case, be, and the same is hereby, *vacated, annulled, and set aside*, and said *receiver*, W. Willoughby, be *discharged and exonerated*, the *injunction* heretofore granted in this case be *dissolved*, and *this suit be dismissed*" (Rec., 345). It was *not until four days after this that the decree of December* 14, 1880, *was passed* in the Richmond chancery suit (Exhibit "A"). The Reynolds suit was then abated, was dead, had long been abandoned, and *had finally been dismissed*, and all that had ever been done in it had been expressly undone. How that suit or anything in it could on December 14, 1880, interfere with the jurisdiction of the chancery court of the city of Richmond or affect the validity of its decree we are unable to comprehend. We submit that the only standpoint from which the question should be viewed is to put one's self in the situation of the chancery court of the city of Richmond at the time when it was called upon to pass its decree, and to see if anything in the *Reynolds case* interfered *then* with its doing what it did. At that date, December 14, 1880, there certainly was nothing in the Reynolds case that could interfere. For four days prior thereto the *injunction* had been *dissolved*, the *receiver discharged*, and the *Reynolds suit dismissed*. Such was the view taken by the Court in a recent case, in which the *Reynolds suit* was held to be *inadmissible in evidence* in a suit like the present. The Court say: "It is obvious, I think, that the cases in the Federal and State courts were not of such a character as to occasion a necessary conflict between the two courts as to the custody of any property. * * * In point of fact, no conflict did occur between the two courts as to the custody of any property." After mentioning the receiver's report and the decree dismissing the Reynolds case, the Court then say: "It was only after this date—after the *Reynolds case* was finally *dismissed*—that any action was taken by the chancery court of the city of Richmond look-

ing towards the acquisition and distribution under its orders of property of any sort that could possibly have been administered by the Federal court. *Under these circumstances it cannot be held* that the *mere pendency* of the *Reynolds case* renders all orders made in the case of Glenn's administrator *utterly nugatory and void.* In the opinion of the Court *the decrees* made in the last-mentioned suit *cannot be impeached in this proceeding by the record in the Reynolds case.* The record in the *Reynolds case* is *immaterial testimony*, and is accordingly *excluded"* (Glenn *vs.* Liggett, 47 Fed. Rep., 475). The defense say that to get jurisdiction over the corporation and its stockholders in the Richmond chancery suit (Exhibit "A") process should have been served not upon the officers of the company but upon the *receiver* in the *Reynolds suit.* The answer to this is found in the law of Virginia, which provides how process shall be served upon a corporation. The statute contains no exception where there is an injunction against and receiver appointed for a corporation. Under the statute the proceedings against it and mode of serving process upon it are the same, whether it be even expired and dead or a going concern. The decisions so hold. Hawkins *vs.* Glenn, 131 U. S., 331; Hamilton *vs.* Glenn, 85 Va., 903, 904, 905; S. C., 13 Va. L. J., 249, and numerous other cases are to the same effect. The question of the regularity of the service of process upon the corporation is, however, *res adjudicata.* It was decided in that original suit itself (Rec., 181, 266), and that decision is conclusive in this case. If the defendant has any complaint to make of that dicision on account of the proceedings in the Reynolds suit he must go into the Richmond chancery suit (Exhibit "A") to make his complaint. He cannot do so in this case under the decision in Graham *vs.* R. R. Co., 118 U. S., 177.

We submit, therefore, that there is nothing in the record of the Reynolds suit (Rec., 303 to 346) affecting in any way the question of *limitations;* that the plaintiff fully sustained his side of the issue on the defendant's *third plea*, and that

the *second* bill of exceptions should have been sustained; also that there is nothing in said suit affecting the question of the *jurisdiction* of the chancery court of the city of Richmond; that the plaintiff fully sustained his side of the issue on the defendant's *fourth plea*, and that, so far as the question of such jurisdiction is concerned, the *fifth* bill of exceptions should have been sustained.

We also submit that the *Reynolds suit* was inadmissible in evidence, and that the *first* bill of exceptions should have been sustained. As to the other questions raised by the fifth bill of exceptions, we will now consider them.

X.

AS TO PLAINTIFF'S RIGHT TO SUE IN THIS DISTRICT—FIFTH PLEA—FIFTH BILL OF EXCEPTIONS.

The defense say that the plaintiff should be treated as a receiver of the Virginia court, and that a receiver appointed by a court of one State cannot sue in another State or in the District of Columbia. We deny that the plaintiff sues as a *mere* receiver; but, granting it, suppose he did, the contention of the defense is not well founded. A foreign corporation *itself* has no legal existence, except in that extra-territorial jurisdiction from which it derives all of its authority and power to act; and yet by *comity* it is permitted to make contracts, acquire property, carry on business, and *to sue* and *be sued*, *plead* and *be impleaded*, in another State. All this is allowed to a foreign corporation. And, upon principle, why should not a receiver deriving authority from the same source from whence the corporation derived its existence and powers be entertained by a sister State or jurisdiction? Accordingly, we find that the modern decisions *establish such jurisdiction*, and that a receiver appointed in *one* State or jurisdiction may sue in *another* State or jurisdiction where the rights of *local* creditors of the *latter* as respects property

in that jurisdiction are *not involved;* and in proof see the following cases: Bank *vs.* St. John, 29 Barb., 585; Lombard B'k *vs.* Thorpe, 6 Cowen, 46, 47; Bidlock *vs.* Mason, 26 N. J. Eq., 230; Cohill *vs.* Wooldridge, 8 Bar. (Tenn.), 580; Grayden *vs.* Church, 7 Mich., 36, 52, 53, 54; Mann *vs.* Cooke, 20 Conn., 178; Bagby *vs.* R. R., 86 Pa. St., 291; Dayton *vs.* Borst, 7 Bos., 115; Dayton *vs.* Borst, 31 N. Y., 435, 438, 439; and this is in precise accordance with the views expressed by Mr. Justice Miller: "It is, perhaps, true that, where duly appointed and authorized, a receiver may ordinarily sue in another State. This power, when it exists, arises from *comity*, in the absence of special statutory regulation, and it is in general subordinate to the rights of local creditors as respects property within the jurisdiction where such a suit is brought" (Chandler *vs.* Siddle, 3 Dillon C. C't, 479; S. C., 10 Nat'l B'k'cy Reg. R., 238); and the authorities are equally full to show that the necessity for the receiver to sue or any supposed irregularities in the proceedings of his appointment *cannot be questioned collaterally* (Stewart *vs.* Lay, 45 Iowa, 604; Schoonover *vs.* Hinkley, 48 *id.*, 82; Cook *vs.* Cit. B'k, 73 Ind., 256; Howard *vs.* Whitman, 29 Ind., 557; Ward *vs.* Farwell, 29 Ill., 593; Att'y Gen'l *vs.* G. Ins. Co., 77 N. Y., 272; Whittlesey *vs.* Frantz, 74 N. Y., 457; Joy *vs.* De Groot, 17 Abb. Pr. (N. Y.), 36, note). No creditor in this District has acquired or is asserting any lien by judgment, attachment, or otherwise. There is no question between the plaintiff and any corporate creditor. There is no reason whatsoever for the plaintiff being denied the right to sue in this District *by comity* were he merely an ordinary receiver of a Virginia court; but the plaintiff does not sue *merely* as a receiver. He is invested, it is true, by the decree of the court with very *great* and *extraordinary* rights, powers, duties, and authority. He is specially "authorized and directed to collect and receive this assessment and call from the stockholders and to take such prompt steps to that end *by suit* or otherwise and *in such jurisdictions*

as he may be advised" (Rec., 287). He not only represented the corporation but *all* the creditors, as we have seen, and, moreover, he was *clothed* by the original decree with all the rights and powers and charged with all the duties of executing the trusts of the deed of trust to the same effect as were the original trustees therein (Rec., 182). The original trustees could have sued in any jurisdiction. As *substituted trustee*, the plaintiff could do so also. The plaintiff sues by virtue of all his title, rights, powers, duties, and authority, and, as we have seen, no creditor could sustain *any suit* in any State or jurisdiction in *opposition* to the plaintiff's title and rights, nor set up any claim nor acquire any lien in *opposition* to him or to the terms of the said assignment.

"By the deed the subscriptions, so far as uncalled for, passed to the trustees, and the creditors were limited to the relief which could be afforded under it" (Hawkins *vs.* Glenn, 131 U. S., 333). Mr. Justice Hagner held that plaintiff was a *trustee* by appointment of the court and by the contract of the parties, and, suing *as such trustee*, could maintain his action in this District (Glenn *vs.* Busey, MacArthur & Mackey, 454), and Mr. Justice Merrick held the same way. (Glenn *vs.* Dodge, 3 Central Rep., 283.)

The plaintiff's right to sue in Maryland was expressly sustained in Glenn *vs.* Williams (60 Md., 119, 120), and the decision in that case has been followed all over the country, and cited and approved in Hawkins *vs.* Glenn (131 U. S., 333). We submit, therefore, that the fifth bill of exceptions should have been sustained.

XI.

PLAINTIFF'S RIGHT TO SUE IN HIS OWN NAME—SIXTH PLEA—FOURTH BILL OF EXCEPTIONS.

The defense strenuously insist, however, that the plaintiff is the assignee of a chose in action, and as such cannot, they

say, maintain this action *in his own name* in the District of Columbia. Mr. Justice Buller said: "The good sense of that rule seems to me to be very questionable, and in *early* as well as in *modern times* it has been so explained away that *it remains at most only an objection to the form of an action in any case*" (Masters *vs.* Miller, 4 Term R., 340). "That it is merely a *shadow* is apparent from the later cases, in which *the courts have* taken care that it shall never work injustice" (Glenn *vs.* Dodge, 3 Central R., 285, 286, 287). The plaintiff, however, was authorized *to sue in his own name*, both *under the terms of the Virginia statute* and under the exceptions to the ancient common-law rule (Glenn *vs.* Scott, 28 Fed. Rep., 806; Lewis, adm'r, *vs.* Glenn, 84 Va., 976 to 981; S. C., 6 Southeastern R., 880 to 883). It is not necessary to do violence to the strictest rules of the common law to maintain this suit in the name of Glenn, the substituted trustee.

FIRST. It has always been conceded to be an exception to the rule against the assignability of a chose in action that when a chose in action has been assigned and the debtor has either *expressly* or *impliedly* promised the assignee to pay him or has *recognized* the right of the assignee that the assignee *can in his own name sue such debtor* (Crocker & Deborah *vs.* Whitney, 10 Mass., 326; Onion *vs.* Paul, 1 H. & J., 114; Allston *vs.* Contee, 4 H. & J., 357; Gordon *vs.* Downey, 1 Gill, 51; Lang *vs.* Fisk, 11 Main (2 Fairf.), 385; Tiernan *vs.* Jackson, 5 Peters, 580, 597; Glenn *vs.* Scott, 28 Fed. R., 806). So where a chose in action is assigned with the *assent* of the debtor, the assignee *can sue on it in his own name* (Kingsley *vs.* N. E. M. F. I. Co., 8 Cush., 400). This whole question is considered in Lewis, adm'r, *vs.* Glenn, *supra*. The Court held in that case (pages 976 to 981) that the plaintiff had perfect right under the Virginia act, *and also independently of it, to sue in his own name.*

As to the plaintiff's right *to sue in his own name* the Court

said: "But conceding, for the sake of the argument, that the company's deed of assignment conveyed only an equitable title to the trustees, and that the legal title remained in the company, and that the common-law rule as to non-assignability of a chose in action would otherwise apply, yet there are well-established exceptions to the rule." The Court then stated the above exception and various authorities in support of it, the last of them being Tiernan *vs.* Jackson (5 Peters, 597–'8). The Court then continued: "In the last-named case Mr. Justice Story said: 'The question, then, is whether there are any ingredients in the case furnishing sufficient proofs of such an agreement (he was speaking of the assent of the debtor in a chose in action to its assignment to an assignee for value) it may be *express* or it may be *implied* if the circumstances of the case, coupled with the acts of the parties, necessarily lead to such a conclusion.' * * * There can be no question in this case as to the assent of the stockholders to the deed of assignment for the benefit of the creditors of the company. By the law of the company's being its members *were bound to act in its corporate name*, and in that name *contract* and be *contracted with*. The president and directors were the agents of the stockholders chosen, in accordance with an express provision in the charter, to 'represent the said company and manage the business thereof.' Moreover, in twenty days after the execution of the deed of assignment *the stockholders*, in general meeting assembled, *approved and ratified its execution by a resolution* commanding the president and directors to make such additional calls upon the unpaid stock as might be necessary to enable the trustees to pay all the debts secured by the deed, thus giving *their emphatic assent* to all that had been done and effected by the execution thereof, *so that in this view the action is clearly maintainable in the name of the substituted trustee*. We are, therefore, clearly of opinion that *the ancient common-law rule* as to the non-assignability of choses in action *has no application what-*

ever to the case" (Lewis' Adm'r *vs.* Glenn, 84 Va., 980, 981; S. C., 6 Southeastern Rep., 883). The decision in Vanderwerken *vs.* Glenn is to the same effect. After stating the common-law rule and the exception to it the court say: "Under this exception to the general rule all that is required to enable the assignee *to sue in his own name* is that there shall appear to be an *express* or *implied* promise on the part of the debtor to pay the debt to the assignee. Such a promise, to my apprehension, was given when the stockholders who were *authorized by their charter to contract* and be contracted *with in the name of the company* by the *deed* of September 20, 1866, *passed* the *unpaid subscriptions* to the *trustees*, and so *expressly agreed* that any *future* calls or assessments that might be necessary *should be payable not to the company, but to the trustees"* (Vanderwerken *vs.* Glenn, 85 Va., 13; S. C., 6 Southeastern Rep., 808). In both of these cases the court held that both under its *general chancery jurisdiction* and its *special statutory jurisdiction* the *mere decree* of December 14, 1880, *operated* to work a *complete transfer from* the *old* trustees to the *substituted* trustee (84 Va., 973, 974; 85 Va., 13), and that consequently Glenn, the substituted trustee, could sue in his own name, even under the provisions of the common law, irrespective of any provision of the Virginia statute.

SECONDLY. The defense claim that the stockholder's contract was to pay the company *only*, and that it could not be changed without his *consent*. We think that we have clearly established and shown that the *deed* of September 20, 1866 (Rec., 35), and also the subsequent *resolutions* of the stockholders, which, by the way, were offered by Mr. J. Carter Marbury, the defendant in the case at bar (Rec., 235, 236), constituted an *express consent* and agreement on his part to the assignment and an express promise on his part to pay the assignee; but there is yet another view of this matter, to which we will now refer. There are certain cases in

which, by the terms of the stockholders' contracts, the unpaid subscriptions are made payable *only upon a call of the directors when ordered by a vote of the majority of the stockholders themselves.* In these cases it has been contended that the court could not decree an assessment or call *unless the stockholders themselves directed it or consented to it,* because neither the company nor the directors could do so; that the court could not change their contracts; but the court took a different view of the matter, and said: "The question, therefore, resolves itself into one of *power* of the bankruptcy court. * * * I think it necessarily follows that such court became vested with all the powers and control over the assets that were previously vested in the charter officers of the company or the stockholders *or both collectively,* and that the court could, by virtue of its authority, make or direct any assessment or call necessary or preliminary to the collection of the assets as fully, to all intents and purposes, as the *stockholders* or *directors* could have done if the company had not gone into bankruptcy. *If the court had the power* to do what the *directors* ought to have done in that way why can it not do what the *directors* AND *stockholders* ought to have done as well?" (Upton *vs.* Hansbrough, 10 Nat'l B'k'cy Reg. R., 369, 374, 375, 376.) In a similar case the court say: "It was *competent for the court to order payment of the stock* AS THE DIRECTORS UNDER INSTRUCTIONS OF A MAJORITY OF THE STOCKHOLDERS MIGHT before the decree in bankruptcy *have done.* The *former* is *as effectual* as the *latter* would have been. It may, perhaps, be well *doubted* whether the stockholders would have *voluntarily imposed* such a burden upon themselves. *The law does not permit the rights of creditors to be subject to such a test.* A court of *equity* has often made and enforced the requisite order in such cases. The bankruptcy court possesses *the same power* in the case in hand" (Sanger *vs.* Upton, 91 U. S., 57 to 62). In both of these cases the stockholders had *not in fact consented,* but, on the contrary, strenuously *objected* to the court's making a

decree against them; yet the court did it in the teeth of their objection, and because the court had power it was held that they would not be permitted to say that they had not consented. In the case at bar the Richmond court had, therefore, unquestionable power to decree that the call should be payable to the substituted trustee, because it had power to do all that could be done with the stockholders' consent, and having so decreed the stockholders will not now be heard to deny that they consented.

THIRD. Where there has been no deed of assignment and the corporate creditor is, therefore, able to proceed and does proceed at once by a bill in equity against the stockholder without obtaining a formal call, the court can and does decree the stockholder to pass the money, not to the corporation, but directly to the creditor (Hatch *vs.* Dana, 101 U. S., 207). And could not the court have done the same thing in the case at bar?

FOURTH. The right to exact the 50 per cent. assessed and called for by the decree of March 26, 1886, never existed at any time in the company or the old trustees. It was created for the first time by the decree of March 26, 1886, as a right of action to the substituted trustee, who was expressly authorized to collect and to receive and to sue for the same (Glenn *vs.* Busey, MacArthur & Mackey, 454; S. C., 3 Central Rep., 283); and in the first of these cases it was held, irrespective of statute, that the plaintiff could sue in his own name in Maryland. (Glenn *vs.* Williams, 60 Md., 120.)

FIFTH. The right of recovery in an action of assumpsit is not restricted to the possession of a legal title, and it is sufficient if the plaintiff is, "*ex æquo et bono*," entitled to receive the money due; and there need not be any direct privity of contract between the plaintiff and the defendant for recovery upon the common money counts. For this proposition see

2 Greenl. Ev., § 102; Hatch *vs.* Saunders, Cowper, 290. "No doubt the general rule is that privity must exist; but there are confessedly many exceptions to it. One of them, and by far the most frequent one, is the case where, under a contract between two persons, assets have come to the promissor's hands or under his control *which in equity belong to a third person.* In such case it is held that the third person may sue in his own name; but then the suit is founded rather on the implied undertaking the law raises from the possession of assets than on the express promise" (Nat'l B'k *vs.* Grand Lodge, 98 U. S., 124). In a subsequent case, where a bill was brought by a legatee against the representatives of an executor *de son tort* (who had wrongfully appropriated the assets of the testator), the court dismissed the bill, and said: "It is therefore simply a case of money had and received by him for the use of the appellant, and a declaration *in assumpsit* on the common counts would have fully stated the appellant's cause of action. *Wherever one person has in his hands money* EQUITABLY *belonging to another that other person may recover it by assumpsit for money had and received* (citing cases). The remedy at law is adequate and complete" (Gaines *vs.* Miller, 111 U. S., 395). If assumpsit would lie by a legatee against an executor *de son tort*, between whom there is no privity of contract whatsoever except that which the law raises from the duty of payment, *ex æquo et bono*, why will it not lie by a trustee against a holder of trust funds dedicated alike by the law and his own act to the payment of his own debts, which the trustee is the hand to collect? Is not this money—trust money—in the hands of the stockholder, to which the trustee is at least equitably entitled for the purposes of the trust?

SIXTH. The charter of the company fixes the amount of the capital stock and that it shall be divided into *shares of* $100 *each* (Rec., 215). The law of Virginia provides that upon every subscription two dollars shall be paid at the time

of subscribing and the residue thereof as required by the president and directors (Code of 1873, p. 546, ch. 57, § 3, which is a reprint of the like chapter in the Code of 1860). The opinion of the general term cites and follows the decision in Glenn *vs.* Busey, 5 Mackey, 233. As stated by the court in that case, "*Neither the payee nor the promisee* is in any way *expressed.* The *corporation* was *not in existence* at the time of the subscription. It is only after this is complete that the subscribers become a corporation. A promise cannot be made to a person, natural or artificial, *not in existence*, and therefore *the corporation cannot be considered the promisee.* The nature of these subscriptions may be said to be that they are mutual promises by the subscribers to each other to pay the amounts subscribed, and each subscription is consideration for the others. But to whom is the payment to be made? The payee is not expressed, and the payment is certainly not to be made to the other subscribers" (Glenn *vs.* Busey, 5 Mackey, 238). Thus far we concur. The general term in that case go on to hold that the corporation, after it comes into existence, is to be treated as the *payee*, and after reviewing various authorities they say: "We may assume, then, that although the subscribers are the promisees the payee is the corporation, and it has the same relation to the subscriber as if the promise had been made to the corporation after its legal existence was complete" (*id.*, 241). If by this language the general term intend to decide (and we so understand the opinion) that when the corporation comes into existence it is the *only* payee, then we are unable to agree with the general term for the following reasons: The calling power is, as we have seen, a franchise of the corporation, and a corporation cannot assign or transfer its franchises without legislative authority (Branch *vs.* Jesup, 106 U. S., 479, 484; Memphis R. R. Co. *vs.* Commissioners, 112 U. S., 619); but the same cases and also Clark *vs.* Barnard, 108 U. S., 436, 451, 452, establish that a corporation can assign all or any of its corporate franchises where

there is clear legislative authority so to do, and that in such case its assignee or transferee may exercise the franchise power as fully and in the same manner that the corporation could previously have done, so far as the same remained unexecuted, but not where the force of the same had been previously spent by having been fully exerted or exercised; and such is the case, even though the assignee have no corporate existence, but is merely a natural person or individual (Memphis R. R. Co. *vs.* Commissioners, 112 U. S., 619, 621, 626). If the corporation in the case at bar had been authorized by the legislature to assign *its calling power* to an assignee, and by such legislative authority assigned *the calling power*, and also assigned to the same assignee the *uncalled subscriptions themselves*, and such assignee thereafter made a call, what would have been the situation of such an assignee and how would he have sued? Under the authorities just cited he would have been the absolute *legal and equitable* holder of the *calling power* at the time that he made the call, and it is conceded that he would have been the holder at that time of all the *equitable estate and property rights* in the unpaid subscriptions. The call so made would be as binding on the stockholders as a call by the company before the assignment would have been, and such assignee would unquestionably have a right to sue; but in what name would he sue—in his own name or in the name of the company? If he sued in the name of the company the stockholder would say I did not agree to pay *you* if an *unlawful* call was made by you, or if *no* call was made by you, or if you *did not hold the calling power when* the call was made. This call was not made by the company at all, nor did the company hold the calling power when this call was made. The company had previously by legislative authority assigned the calling power, and its assignee made this call and held the power to do so when this call was made. My agreement was to pay *the holder of the calling power* as and when *lawfully called upon* by such *holder*. We submit that it is not a

question of the *assignability* of a chose in action, but of who is the *payee* of the call, and that this depends upon who held and exercised the calling power. In addition to this, as we have already seen, until a call is made the *amount* is *unliquidated* for which the right of action is to accrue, and the *time* is *unascertained* when it will accrue. There can be *no complete* assumpsit, *either due or not due*, except for a *liquidated amount*, and hence there can be *no complete assumpsit* till the call is made. It is this which constitutes one of the essential differences between the case at bar and an ordinary promise to pay upon demand. In the case of a promise to pay upon demand the *amount* is *liquidated and certain*, and, indeed, no actual demand is necessary before suit, as the bringing of the suit is held to be a sufficient demand; but in the case at bar it is exactly the reverse. A previous call is not only necessary to fix the *time*, but to fix the *amount* (Chandler *vs.* Siddle, 3 Dillon, 479; Robertson *vs.* Sibley, 10 Minn., 256). There can be *no complete assumpsit* in the name of the company or its assignee of the franchise as against the stockholder until a call is made. Then for the first time is there a *complete* chose in action *either due or not due*. If the company makes a call the franchise power to the extent of that call is exhausted and it could not itself make a call for the same thing again, and could not afterwards, even with legislative authority, assign its franchise power to make that *same* call to any other person or party. Its franchise power would to that extent be *exhausted* (Memphis R. R. Co. *vs.* Commissioners, 112 U. S., 621). The call would have fixed both the *time* of payment and the *amount* to be paid, and a *complete cause of action* and *chose in action* would thereby have accrued to the company, and the company in such a case would undoubtedly be the *payee* as to *that* call. No one else could become the *payee* of such a call, since the company, having exhausted its franchise power to that extent, could not assign the same to any one else. The company could, of course, after that assign the *rights of property*

in the unpaid subscriptions which it had called for, but the same would be merely the assignment of a *chose in action*, the company's previous call having made the chose in action *complete*. On the other hand, if the company assigned its franchise power to an assignee, and also assigned its property rights in the unpaid and uncalled subscriptions to him, and the assignee then made a call, a complete cause of action or chose in action never would have existed in the company for the assignee's call. The *cause of action* and *chose in action* would have become *complete* for the first time *in the assignee* when he made his call, and *he* and *he alone* could sue *in his own name* on such a call *made by him* because he would have held the *franchise power* to make the call at the time that he made it. Indeed, it appears to us immaterial who is the *equitable owner* of the *unpaid subscriptions*. Whoever *holds the franchise power* to make the call, and *as such holder makes it*, is the *payee* of *that* call.

This is so because in the supposed case, the law authorizing an assignment of the company's franchise, the stockholder is held to have agreed to the law, and so to have agreed that such an assignee might exercise the power, and that the stockholder would pay him if he did.

In the case at bar the company did not assign its franchise to any one, and could not do so, because the legislature had not authorized it to do so (Silver Hook Road *vs* Green, 7 Reporter, 187; 12 R. I., 1; Green's Ultra Vires, p. 151, note *a*); but upon its becoming largely indebted and greatly involved and failing to make a call its franchise power to make a call upon its stockholders did, by operation of law, *devolve upon the court* (Upton *vs.* Hansbrough, 10 Nat'l B'k'cy Reg. R., 374, 375; Sanger *vs.* Upton, 91 U. S., 57 to 62) and was exercised by the court. It is clear that if the stockholder *merely* agreed that the company *alone* might call upon him to pay his unpaid subscription the court could not *itself* call upon him to pay the same. It could not make a call *itself*, but could only *decree the com-*

pany to make a call and *compel it* to do so. Even if the stockholder were a party to the suit this would be so, for the reason that the court could not *change the agreement*, but could merely *compel* the parties *to carry it out*. It is conceded, however, that a court of chancery has the power not merely to decree the company to make a call but, under the circumstances of this case, *to* ITSELF *make a call* (Sanger *vs.* Upton, 91 U. S., 57, 59, 60; Pulman *vs.* Upton, 96 U. S., 328; Hatch *vs.* Dana, 101 U. S., 214; Scoville *vs.* Thayer, 105 U. S., 155). Even where the unpaid subscriptions are to be paid *on the call of the directors when ordered or directed* by a *majority of the stockholders*, still, as we have seen, a court of equity or the bankruptcy court, by virtue of its equity powers, can, *it is conceded, itself decree a call in the teeth of the objection of the stockholders* (Upton *vs.* Hansbrough, 10 Nat'l B'k'cy Reg. R., 369, 374, 375, 376; Sanger *vs.* Upton, 91 U. S., 57 to 62). It can do so because the stockholder *is held to have agreed by becoming a stockholder* that under such circumstances such court *shall have the power* to make a call for the benefit of corporate creditors. Where an act of the legislature has authorized the company to assign its power to make a call this is a part of the *lex scripta*, and the stockholder is held to have agreed to the *lex scripta* (Valleé *vs.* Dumergne, 4 W. H. G. (4 Exch.), 289; Bank of Australasia *vs.* Harding, 9 M. G. & S. (67 E. C. L.), 660; Copin *vs.* Adamson, L. R. (9 Exch.), 345; Bank of Australasia *vs.* Nias, 71 E. C. L., 717; Rousillon *vs.* Rousillon, L. R., 14 Ch. Div., 351), and so *to have agreed to such an assignee* making the call because it is a part of the *lex scripta*, and also to have agreed to such assignee suing *in his own name* upon the call made by him, because this is a necessary implication of the *lex scripta*. Where such circumstances arise as arose in the case at bar or as arose in Upton *vs.* Hansbrough, Sanger *vs.* Upton, or Scoville *vs.* Thayer, *supra*, and the company, or the company and stockholders together, as the case may be, made no call and the creditors cannot get paid without

looking to the unpaid subscriptions, the stockholder is held *to have agreed to a court of chancery,* or to a court having *chancery* powers, making the call, and to its agent or appointee suing *in his own name* thereon because it is a part of the *lex non scripta.* The same reasons, therefore, which render it necessary that an assignee of the franchise should sue *in his own name* upon a call made *by such assignee* would also render it necessary that the agent of the court should sue *in his own name* upon the call made *by the court.* We therefore submit, as we said before, that it is not a question of the *assignability* of a chose in action, but that it is merely a question of who is the *payee* of this call. By becoming a member of the company the stockholder agrees to pay the company if it makes a call, a legislatively authorized assignee of the calling power if such assignee makes a call, or the court or its agent if the court makes a call. Whichever of these *heads* makes *a lawful call* the stockholder agrees to pay the *one* that makes a lawful call while holding the franchise power to do so. He agrees to pay the party that has a right to call on him. Such party, or in the case of the court, its agent, *is the payee,* and as such must bring the suit *in his own name.* It is plain that a suit could not be maintained in the name of the company for this call. The company could not recover upon the proof that it had failed to perform the condition of that contract, and that the court had performed it instead of the company. The answer to the company would be decisive. The stockholder would say, "I promised to pay the company, by my contract, whenever *it* by its *own* officers should ascertain *how much* I should pay and *when* I should pay; but I *never promised* to pay the company such sum as *a court of equity* might decide. I must pay *on condition,* and it appears by the evidence offered by the company that it has failed to perform the condition upon the performance of which I stipulated that my liability to pay it should depend." It is submitted that this defense would be unanswerable; but if it is un-

answerable it is because the call of the court does not create an assumpsit *to the company* on the part of the stockholder. That the call of the court does create an assumpsit or obligation on the part of the stockholder to somebody is conceded, and there cannot be an obligation without an obligee as well as an obligor.

It is respectfully submitted with great confidence that the real nature of the obligation created by the decree is as follows:

When a corporation is created and subscriptions are made to its stock two entirely distinct and separate laws at once attach to it and govern the rights and duties of its members—one with reference to the *corporation*, and the other with reference to *its creditors* in case of the insolvency of the corporation.

The one law that governs the relations of the company to its members and of its members to it is the *written* law, the act of incorporation, and the constitution and by-laws of the corporation and of the State. This law is *written* and open to all.

It is plain to see by its terms when and to what extent and under what circumstances this *written* law creates an obligation on the part of the stockholder to the company or on the part of the company to him.

This is the *lex scripta* of the corporation.

But simultaneously another law, *non scripta*, but no less obligatory and no less well known, attaches to the nascent corporation and determines and fixes the duties and obligations of the corporation and of its stockholders to those who may become *creditors* of the company.

Unseen and unwritten, this code of law comes into force at the moment the corporation comes into being, ready to operate when occasion shall bring it into operation and as obligatory when circumstances call for its application as the *lex scripta* of the company.

This law is latent and silent until the company ceases or

refuses to perform its functions; but the moment it so ceases or refuses, all the obligations of the *lex non scripta* at once take effect and determine the duties and obligations of the stockholders to the *creditors* as decisively as the *lex scripta* determines the duties of the stockholders to the company while the latter was performing its functions under its charter. This *lex non scripta* at once attaches to all the corporate property, whether collected and in the treasury of the company or invested in its visible property or left uncollected in the hands of its stockholders.

Nay, more than this, the *lex non scripta* of the corporation, when it becomes insolvent, will operate *to annul in favor of creditors* things done by the corporation while it was a solvent, going concern, although those things when done were *valid* as between the *company* and the *stockholders* and *could not have been impeached by either.* For example, it is perfectly competent for a solvent corporation to agree with its stockholders that they shall not be required to pay their subscriptions in full. As between the corporation and the stockholder, such an agreement is *valid;* but should the corporation afterwards become insolvent the *lex non scripta* will go back to such an agreement between the corporation and its stockholders and will say, "This agreement is *void* as against the *unwritten* law of the company, which protects the rights of *its creditors.* Although that unwritten law was dormant when the contract was made between the corporation and its stockholders, it existed, nevertheless, ready to undo the contract in case the subsequent insolvency of the company should render it necessary to annul it for the benefit of the *creditors.*"

This demonstrates that this *unwritten* body of corporate law, silent it may be and dormant until the rights of *creditors* call it into action, is nevertheless the law that ultimately controls and can even annul things done under and in accordance with the *lex scripta* if those things should

be found to be against the rights and interests of *creditors* as those rights are secured by the *lex non scripta.*

Indeed, this Court has said that this *lex non scripta* is incorporated in and qualifies every transaction between the company and its stockholders. In Scoville *vs.* Thayer, 105 U. S., pp. 153, 154, this Court says:

"The stock held by the defendant was evidenced by full-paid shares. It is conceded to have been the contract between him and the company that *he should never be called upon to pay any further assessment upon it.* The same contract was made with *all* the other shareholders, and the fact was known to *all;* as between them and the company this was a perfectly *valid* agreement. It was not forbidden by the charter or by any law or public policy, and as between the company and the stockholders was *just as binding* as if it had been expressly *authorized* by the charter. If the company, for the purpose of increasing its business, had called upon the stockholders to pay up that part of their stock which had been satisfied by 'discount' according to their contract, they could have *successfully* resisted such a demand. *No suit* could have been maintained by the *company* to collect the unpaid stock for such a purpose. The shares were issued as full paid, on a fair understanding, and *that bound the company.*"

Having thus defined the effect of such a contract under the law that governs between the *company* and its members, the Court proceeds to show how such a contract stands in the light of the *unwritten* law of the corporation which protects *creditors.* On page 154 it is said "in this case the managers and agents of the bankrupt company had, in effect, represented to the public that all its capital stock had been subscribed for and had been or would be paid in full. Considered, therefore, *in the view of a court of equity,* the contract botween the company and its stockholders was this, namely: *that the stockholders should pay, say, for example, twenty dollars per share on their stock and no more, unless it becomes necessary to pay more to satisfy the creditors of the com-*

pany, and when the necessity arose and the amount required was ascertained, then to make such additional payments on the stock as the satisfaction of the claims of creditors required."

We submit that it is here clearly decided that what we have called the "*lex non scripta*" of the corporation and its stockholders attaches itself to and controls contracts which are perfectly good as between the company and its members.

And we beg to ask at this point what would become of the view that the *company* could sue *in its own name* upon the contract of subscription for a call made by a court of equity in a case in which the company had agreed *not to make the stockholders pay in full*, or in which the company had agreed *not to call* upon the stockholders for their unpaid subscriptions, unless *directed* so to do by the stockholders themselves, and they had *refused* to give such direction?

In the case above cited this Court decides that the company may *bind itself* as between *it* and its *stockholders* not to require them to pay in full, but that such a contract must *yield* to the superior rights of the *creditors* in case of the insolvency of the company. In such a case would it be possible for the *company in its name to sue* on the contract of subscription for a call made by a court of equity in the face of an agreement, binding between the company and the stockholder, that the company would not demand any more? And so, too, we ask, would it be possible for the company in its name to sue for a call made by a court of equity after the corporation had been dissolved and its charter had expired or been repealed, as was the case in Hightower *vs.* Thornton (8 Ga., 486), where the chancery court held that it could after the dissolution of the corporation *itself* make an assessment and call *as the holder of the power to do so*, notwithstanding the corporation had ceased to exist? Could a suit be maintained in the name of a corporation that was no longer in existence?

We submit that this consideration demonstrates that the obligation created *by the call of the court* upon the stockholder is not only *not an obligation to the company*, but that it may be an obligation *inconsistent* with and *superior* to the rights of the company under its contract with its members.

But to return to the line of the argument, the call made by the *court of equity* upon the stockholders is but the enforcement of the stockholders' contract *as viewed by a court of equity* that was called upon to enforce it under the "*lex non scripta.*"

In the case of Scoville *vs.* Thayer, 105 U. S., above cited, it has been seen how this Court *add to the express contract* made by the company with its stockholders that they should not pay more than twenty dollars per share, *the obligation imposed by the unwritten law that they would pay more if it became necessary to pay creditors*, and accordingly the court in bankruptcy (exercising only the same power under which the court in Richmond made the call in this case) proceeded to enforce this *unwritten* law, and decreed that the stockholders should pay the rest of the subscription.

It seems clear, then, that when *a court of equity makes a call* because the company has failed or refused, it is but enforcing the obligation assumed by stockholders *not* to the *company*, but to the *creditors* of the company by force of the *unwritten* law by which the contract of subscription is governed. (91 U. S., 60, Sanger *vs.* Upton.)

In this view the contract of subscription would read as follows: "I promise to pay the company one hundred dollars per share for my stock, in such amounts and at such times as the company may require me to pay," and to this express promise the *unwritten* law of the contract adds this further obligation:

"*And should the company fail or refuse to call upon me to pay my subscription and there be creditors of the company unpaid, I promise to pay so much of my subscription as a court of equity may require me to pay to satisfy said creditors.*"

The call of the court will have the same legal effect in rendering the stockholder liable on his subscription as the call of the company would have had, but the duty or obligation created by the call of the court is not a duty or obligation to the company. The assumpsit on the part of the stockholder arises on the call of the company or on the call of the court, but it is plain that in the *former* case the assumpsit is *to the company* by the literal terms of the written contract of subscription or of the holding of the stock, while in the *latter* the assumpsit is *to the payee named by the court*, whether he be a trustee under a deed of trust, which is effectual to pass the unpaid subscriptions, as in this case, or an assignee in bankruptcy.

It is well known that (had there been no deed of assignment) the liability of the stockholder to pay his unpaid subscription might have been enforced either by a suit against him personally, as in Ogilvie *vs.* The Knox Insurance Company, 22 Howard, 380, and Hatch *vs.* Dana, 101 U. S., 214, in which case the court can decree payment directly from the stockholder *to the creditor*, or by the appointment of a receiver where there was no deed of trust or assignment to prevent.

In Ogilvie *vs.* Knox, 22 Howard, p. 392, it is said:

"It is true, if it be necessary to a complete satisfaction to the complainants (creditors) that the corporation be treated as an insolvent, the court may appoint a receiver, *with authority to collect and receive* all the debts due to the company and administer all its assets. In this way all the other stockholders or debtors may be made to contribute."

If we are right, then, in our view of the nature and origin of the right of action in this case, namely, that it is but the enforcement by a court of equity of the promise of the stockholder, *inherent in his contract as that contract is equitably construed*, to pay upon the call of a court of equity, if the company fails or refuses to make a call, it must follow that the

court has *power to designate the person* to whom such payment shall be made. Unless it can so *designate an obligee*, it is difficult to understand how it can *create an obligation*, as it is conceded that it can. When there is no deed of assignment the court *can designate the creditor himself as the obligee or payee* of the sum which the stockholder is decreed to pay, as in Hatch *vs.* Dana, 101 U. S., 207, and *bind* the stockholder by such designation.

So, too, if a court of equity can appoint a receiver of a corporation it must be able to bind all the stockholders by such appointment, so that they cannot deny that the receiver appointed by the court is the person entitled to collect the assets of the corporation, whether the individual stockholders were actual defendants to the suit in which the receiver is appointed or only constructively present as represented by the company. This must be true, if the court can appoint a receiver at all, in cases where the stockholders live in different jurisdictions, and most cases are cases of that kind. The bankruptcy court can not only make an assessment and call *itself*, but it *can direct the assignee* to make the same, and where he does so under the order of the court it is *binding* on the stockholders (Scoville *vs.* Thayer, 105 U. S., 143 to 147), and so the chancery court *can direct its receiver* to make an assessment which, when so made by him, will be *binding* on the stockholders (Upton *vs.* Hansbrough, 10 Nat'l B'k'cy Reg. R., 378). The court, therefore, *can delegate* its power under the *lex non scripta*, though, as we have seen, the corporation *cannot delegate* its power under the *lex scripta*. In the case last cited the court—Hopkins, J.—say: "In a creditor's bill against a corporation, to reach its equitable assets the chancellor could appoint a receiver, and could direct him to make an assessment upon the stockholders without making them parties to the bill, and that *if the chancellor in such a case could authorize his receiver to make a valid assessment, collectible by the receiver at law*, I think a court of bankruptcy

could do the same," and accordingly held that it could. (Upton *vs.* Hansbrough, 10 Nat'l B'k'cy Reg. R., 378.)

To sum up the result of the foregoing views, we submit that the promise enforced by the Richmond decree is one that *grows out of the contract of subscription or out of the relation of stockholder as equitably construed* by the chancery court that makes the call. It is an obligation that attaches to the money remaining unpaid and uncalled for in the hands of the stockholder, and he is bound to perform that obligation whenever required so to do by a court of equity having jurisdiction of the fund, and that must be a court of the habitat or domicile of the corporation having jurisdiction over the corporation, and, when the fund has been assigned, as in this case, having jurisdiction also over the assignee.

Having these parties before it, the Court has jurisdiction over the stockholders to enable it by its decree to accomplish the following results:

1st. To ascertain the fact that there are debts of the corporation unpaid, and that there is money remaining uncalled for in the hands of the stockholders.

2nd. That no other property of the corporation remains wherewith to pay its debts.

3rd. That the right to receive this fund, when collected, is vested in the trustee by deed.

4th. That the company has failed or refused to call in and collect this money and to pay it to the trustee or enable the trustee to collect it.

5th. That circumstances have arisen which call into operation the obligation of the stockholder *to the creditors or to their representative* to pay what remains unpaid on his stock, upon the call of the Court, because the company has failed to call for it

6th. To decree that he shall perform that obligation, and that he *shall perform it to the trustee under the deed, to whom a duty is thus created*, a duty that was never, and from its very nature could never, be a duty to the corporation, enforceable by it in a suit in its own name, but could only be enforced by the trustee by a suit in *his* own name.

SEVENTH. The Virginia cases of Vanderwerken *vs.* Glenn, 85 Va., 13, and Lewis, adm'r, *vs.* Glenn, 84 Va., 980, 981, establish that the decree of the Virginia court gave the substituted trustee a right *to sue in his own name;* and in Virginia a plea that he cannot so sue is not sufficient, *altogether, outside of any statute of that State.*

It is the legal effect of the decree *itself.* It must have the same effect everywhere in the United States. Under the Constitution of the United States and the act of Congress of May 26, 1790, c. 11 (1st U. S. Stats. at Large, 122), the decree of March 26, 1886, and the transcript of record (Exhibit "A") are obliged to have "such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from whence the said records were taken" (see Hampton *vs.* McConnel, 3 Wheat., 235 (cited in Thompson *vs.* Whitman, 18 Wall., 437); Wernway *vs.* Rawling, 5 G. & J. (Md.), 507; Ritter *vs.* Hoffman, 35 Kansas, 218). The cases of Vanderwerken *vs.* Glenn and Lewis, adm'r, *vs.* Glenn, *supra*, decide that the deed of September 20, 1866, was an express contract and agreement not only by the stockholders collectively, but also by each and every stockholder as an integral part of the corporation, that the unpaid subscriptions, when called for, should be paid to the trustees under the deed, and also decide that the subsequent resolution of the stockholders in general meeting was an agreement by the stockholders to the same effect, and that the original trustees might have sued in their own names upon a call being made outside of any statute of that State and under the strictest rules of the common

law, and also decide that the decree of December 14, 1880, had worked a complete substitution and had clothed the substituted trustee with all the rights and powers of the old trustees in this respect, and that consequently the plaintiff *could sue in his own name* outside of any statute of that State.

If such be the effect of the deed of the corporation in Virginia, that must be its effect everywhere, the law of the domicile of a corporation being the law that will be applied to those *who deal with it* (Glenn *vs.* Liggett, 135 U. S., 544; Hawkins *vs.* Glenn, 131 U. S., 319; Canada Southern R. R. Co. *vs.* Gephard, 109 U. S., 528); and if such be the force and effect of the decrees and of the record (Exhibit "A") in Virginia, such must be their force and effect in every court of the United States, under the Constitution and acts of Congress in such cases made and provided.

We submit, therefore, that from every point of view the plaintiff has fully sustained his side of the issue on the defendant's sixth plea, and that the fourth bill of exceptions should have been sustained; and we submit that for each and all of the errors assigned (Record, 350 to 354) the judgment or judgments against the plaintiff in this cause should be reversed and the said errors corrected.

There is a clerical or typographical error on pages 302 and 303 of the printed record, in this: that it should read Exhibit "Y" instead of Exhibit "G," as there printed. The original document is marked Exhibit "Y." and is Exhibit "Y" in the original transcript in this Court.

HENRY WISE GARNETT and
CONWAY ROBINSON, JR.,
Attorneys for Plaintiff, Who is the Plaintiff in Error.

FILED.
JAN 2 1892
JAMES H. McKENNEY.
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1231

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

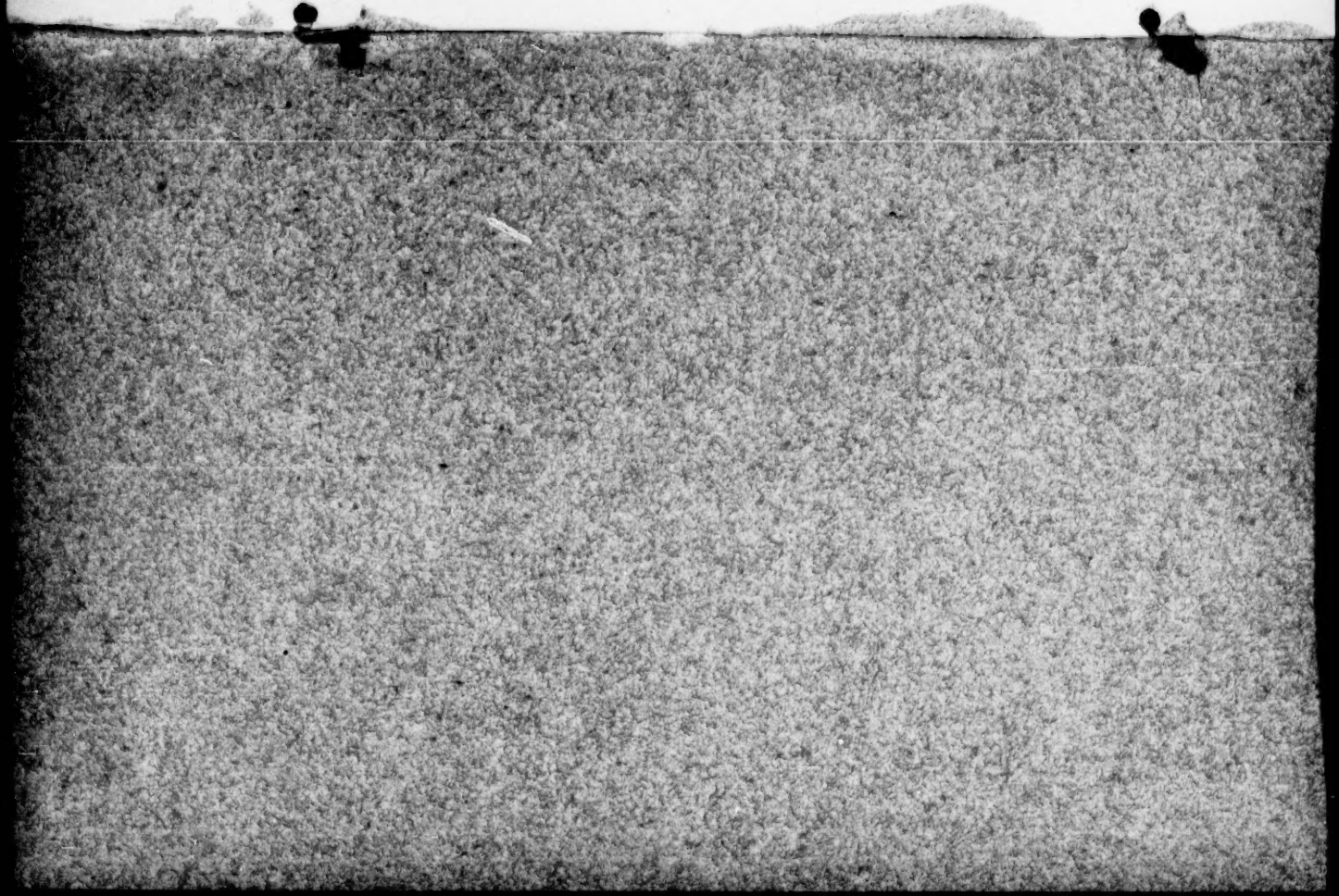
JOHN GLENN, TRUSTEE,
PLAINTIFF IN ERROR,

vs.

J. CARTER MARBURY,
DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

CHARLES MARSHALL,
JOHN HOWARD,
For Plaintiff in Error.



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BRIEF FOR PLAINTIFF IN ERROR.

This suit is like those of Hawkins vs. Glenn, in 131 U. S., and Glenn vs. Taussing, and Glenn vs. Liggett, in 135 U. S.

Those suits were brought to recover an assessment levied upon the stockholders of the National Express and Transportation Company, a Virginia corporation, by a decree of the Chancery Court of the city of Richmond, Virginia, on the 14th December 1880. After that decree was rendered in the case of Glenn's Admr. vs. The National Express and Transportation Company, the case was removed to the Circuit Court of Henrico county, sitting in Equity, and on the 26th of March 1886, the latter Court made a decree levying another assessment of fifty dollars per share upon the stockholders of said company, and this suit was brought to recover the last assessment from the defendant, who, it is admitted, is the holder of one hundred shares of the capital stock of the company. (See page 19, Record, Stipulation of Counsel.)

The decree of December 14th 1880, provided that the creditors and the trustee appointed by the decree, might apply for a further assessment in case the first should prove insufficient to pay the debts of the company (Record, page 199,) and the decree of March 26th 1886, was obtained under the liberty so reserved in that of December 14th 1880. (See proceedings to obtain decree, and the decree itself, Record, pages 285–291. Decree of March 26th 1886, page 287.)

The assignments of error present a number of questions that have already been settled by the decisions of this Court in the three cases above mentioned, and three questions not raised in these cases.

It will be seen that the General Term rests its decisions entirely upon the single point that the plaintiff in error is not entitled to maintain this suit in his own name. (See opinion of Court, page 349, Record.)

This question is raised by the 5th and 6th pleas (Record, page 17), and the ruling on this point is duly presented by several assignments of error hereafter particularly noticed. (Record, pages 352, 353.)

But the General Term, in its judgment, presented for review by the writ of error in this case, declared that there was "no error in the record and proceedings, and in the judgment of the Supreme Court of the District of Columbia, holding a Circuit Court and a Special Term," and affirms the judgment generally.

There were several other rulings made at the Special Term, and brought before the General Term, on bills of exception, which were affirmed generally by the General Term.

The affirmance of these rulings is assigned as error here, and we think they are properly before this Court, notwithstanding the reason given by the General Term for its judgment. If any of the rulings so affirmed by the General Term, might have affected the verdict and

judgment of the Special Term, we are entitled to have those rulings reviewed here, although they were not made the basis of the judgment of affirmance.

For example. The judge of the trial Court admitted certain evidence offered by the defendant below, to which the plaintiff excepted. That Court, after admitting that testimony, instructed the jury that upon the whole evidence, their verdict must be for the defendant.

The instruction was excepted to, and the General Term affirmed the judgment, saying that there was no error in the record and proceedings of the Special Term. We think that this affirmance entitles us to have this Court decide whether the evidence admitted against our objection, was properly admitted, notwithstanding the General Term affirmed the judgment for reasons not connected with that testimony. Should this Court hold that the evidence objected to was properly admitted, and that it warranted the judgment in favor of the defendant, that judgment must be affirmed, even if the Court should not agree with the General Term as to its reasons for affirming the judgment of the Special Term.

We shall therefore argue all the assigned errors, and not confine ourselves to those that controlled the judgment of the General Term.

There was also a motion for a new trial made in the Special Term, based upon specified errors of law, which was overruled by the Special Term. And an appeal from that order was taken to the General Term, when the order was affirmed. The affirmance of that order is one of the errors assigned.

All the questions raised by the appeal from the action of the General Term in affirming the order refusing a new trial, are presented in the special assignments of error, and the decision of those assignments of error, necessarily disposes of the case.

The first assignment of error, (Record, page 351) is to the affirmance by the General Term of a ruling of the

Special Term on the question of the admissibility of certain evidence, consisting of a transcript of a record of a case once pending in the Circuit Court of the United States for the Eastern District of Virginia, which will hereafter be referred to as the Reynolds suit.

The evidence objected to is set forth in the first bill of exceptions, which begins at page 23 of Record.

The Record of the Reynolds suit begins at page 303 of the Record, and extends to page 346.

This record is part of the evidence referred to in the instruction given to the jury by the judge of the trial Court, and it becomes necessary to inquire, whether that record shows any warrant for such an instruction, and for the judgment of the Special Term, affirmed by the General Term, or whether that record is immaterial and irrelevant, and, therefore, inadmissible.

The following is a statement of the contents of that record, and of the proceedings shown by it.

That suit was instituted on the 8th day of August 1886 by Josiah Reynolds, a citizen and resident of the State of Mayland, and claiming to be a stockholder, against the National Express and Transportation Company and certain of its officers, in the Circuit Court of the United States for the Eastern District of Virginia. The bill will be found beginning at page 303 of the Record and extending to page 312. The answer of John J. Kelly, one of the defendants, who was the Superintendent of the company, begins on page 315 of the Record and extends to page 322. The answer of the National Express and Transportation Company will be found on page 326 of the Record, and adopts the answer of Kelly. On the day of the filing of the answer of the Company, which it will be found positively denies every allegation of the bill upon which the application for an injunction was based, the Hon. John C. Underwood, then Judge of the District Court, sitting in the Circuit Court for the Eastern District,

granted an injunction as prayed in the bill, prohibiting the defendant company from doing any of the things stated in the bill, among which were some matters expressly denied, and conclusively shown to be untrue by the answer. The order for the injunction was passed on the 23d August 1866. The decree in said case which was passed upon the papers filed without any evidence whatever, and upon answers which swore away every pretence of equity contained in the bill, was passed on the 31st day of December 1866 and will be found beginning at page 332 of the Record and extending to page 334.

The decree appoints a receiver and provides that after he gives bond he "shall be vested with all the estate, real and personal, as well as all the money, notes and accounts, *assessments due on stock or other securities or rights in action* of the said National Express and Transportation Company, as trustee of such estate and property for the use and benefit of the creditors of said company, and of its stockholders and others who may be interested in the same, with all the powers, rights and authority of a trustee appointed by the Court or acting within its jurisdiction and control."

The decree further provides as follows: "such receiver shall have all the powers and authority which ordinarily belong to such trustee, and the said defendants as well as all other persons who may have the possession or control of any of the money, books, property, effects or things in action of the said National Express and Transportation Company, and especially John J. Kelly, John Blair Hoge and C. Oliver O'Donnell, the trustees named in a pretended assignment referred to in the complainants' petition, are hereby required to assign, transfer and deliver to said trustee on being notified of this order, all such money, property, notes, bonds, estate, real and personal, so in their hands or under their control, and they are required to execute and deliver all deeds, conveyances, releases, transfers or acquittances, that may in any wise be

necessary to place any or all of said property or effects, so in the hands or under the control of said receiver, and they and each of them on being required, shall make all discovery and furnish all information which the said receiver may require in relation to any or all of the property, business or transactions of the said company. The said receiver will proceed to collect all the property, money and effects of said National Express and Transportation Company, and convert the same into money, and he will also ascertain the amount of the debts and liabilities of the said National Express and Transportation Company, and after payment therefrom of all expenses, including counsel fees and costs, with such compensation as the Court may allow him, will from time to time apply the funds so received and obtained by him in the satisfaction and discharge of the debts of said company under the orders of this Court, *and if there shall be any sums due upon the shares of the capital stock of the said company*, the said receiver will proceed to collect and recover the same, unless the persons from whom said sums may be due, shall be wholly insolvent, and for this purpose may prosecute actions at law or in equity for the recovery of such sums, in his own name as receiver or otherwise, as he may deem best, and shall apply the money so received under the order of this Court to the satisfaction and payment of the remaining debts of said company, as well as all the legal and necessary expenses of the due execution of this trust, including a reasonable compensation and commission to himself, for services on this behalf, and also including such necessary and reasonable fees and costs as may be necessary in maintaining, prosecuting or defending any suits which it may be necessary to prosecute or defend in order to the full execution of this trust; and said receiver shall immediately upon his appointment give notice to all the creditors of said company and to its stockholders and to all persons indebted thereto or holding any property, money or effects thereof, of his appointment as receiver by this Court, by publishing the same in

so many and such of the public newspapers within this district and elsewhere, as he may deem proper, and may and shall give such other and further notice to such parties as he may think necessary. If any property, money or effects shall remain in the hands of said receiver after paying all the debts of said company and all the expenses of this trust he shall distribute the same among the stockholders under the order of this Court. The said receiver shall at all times be subject to the order of this Court, and may be compelled at any time to account and to give any other or additional bond, and it is further ordered that the said receiver cause notice to be given to all of the creditors of said company, to present and file with him a statement of all their demands against said company, with the vouchers for the same, and that notice of the filing of his bond, and acceptance of this trust be given to all the said defendants, as well as the stockholders, by advertisement or otherwise."

The receiver, Westel Willoughby, qualified by giving bond on the 12th of January 1867, and there the proceedings ended, until the 2d day of February 1870, more than three years after the institution of the suit, when Washington Kelly filed a petition to be found at page 337, asking to be made a party complainant in said cause, as the same was instituted on behalf of all the stockholders, and asked to be allowed to file an amended and supplemental bill, the suit having abated by the death of Reynolds, (see 6th paragraph, bill, page 339); and leave was so granted by an order passed February 2d 1870. On the 22d of August 1870, the said Washington Kelly filed the amended and supplemental bill which will be found extending from page 337 to page 344 of the Record.

The amended and supplemental bill prays for no process, nor was any order of any kind ever made thereon, no process was issued, or other steps taken to require any of the defendants named in said amended and supplemental bill to answer the same, nor was any answer ever filed

thereto or other plea made. The case rested with the filing of the amended and supplemental bill until the 11th day of December 1880, more than ten years, when the receiver Willoughby made a report to be found at page 344 of the Record, in which he states that he had been unable to do anything, that no property had come into his possession except two freight cars, that he found that a receiver had been appointed by a Court in the State of Maryland who had possession of all or nearly all the books and papers of the company—(the reference is to the case mentioned in the opinion of the judge of the Richmond Chancery Court, Record, page 219.) He found that its property had been seized under attachment by creditors of the company, that he had employed counsel and incurred large expenses in endeavoring to procure the books and papers and other property of the company, and that the money that he had collected was not more than sufficient to reimburse him for his expenses and pay him for the time and labor employed. He further stated that no creditors had submitted their claims to him, and that no demand for action by him had been made for many years. That none of the stockholders or officers of the company had given him any assistance, but that all of them appeared to be adverse to his taking action in the matter, and neither the plaintiff nor any one for him, had taken such action or asked for any action for at least ten years. He further stated that some of the creditors he was informed desired to proceed to the enforcement of their claims by another proceeding, and that he made his report at the request of their counsel, but would make a further report if required. If not required, however, he asks that an order might be passed, discharging him as receiver and relieving him from all liability on account thereof.

Upon the coming in of this report and on the motion of John Blair Hoge and John J. Kelly by their counsel, the Court on the 10th day of December 1880, passed a decree annulling and vacating the order of the 31st of

December 1866, appointing the receiver, and discharged the said Willoughby as receiver, dissolved the injunction previously granted, and dismissed the suit. The decree will be found on page 343 of the Record.

It will appear by reference to the allegations of the fourth paragraph of the amended and supplemental bill to be found on page 338 of the Record, that the trustees John Blair Hoge, John J. Kelly and C. Oliver O'Donnell appeared in the Court and answered the petition of the original complainant filed therein, as did the officers and agents of the corporation and the corporation itself, and set up the deed of trust executed to Hoge, O'Donnell and Kelly, and claimed to act under the authority thereof in winding up and settling the affairs of said Express Company.

The petition referred to in the third paragraph of the bill, and the answer of the trustees, and of the officers of the company, and of the company itself, mentioned in the fourth paragraph of the bill, are not in the Record of the Reynolds suit, but enough is found to show that Hoge & Kelly appeared in the case, and became parties thereto, so as to entitle them to make the motion referred to in the final decree of the Court passed on the 10th of December 1880, found on page 345 of the Record.

It is not easy to see what bearing this extinct suit could have on the decree of December 14th 1880, passed four days after it was dismissed, and it is yet more difficult to understand how it could affect the decree of March 26th 1886, passed nearly six years after the Reynolds suit had been finally dismissed. In this connection, attention is called to the fact, that when application was made to the Circuit Court of Henrico county to levy a further assessment, being the assessment now sued for, the Court referred the matter to its Master Commissioner for a report, and that Commissioner caused the National Express and Transportation Company to be summoned, and gave it full opportunity to be heard, as is usual under the practice in

Virginia in such cases. (See proceedings to levy second assessment, Record, pages 283–291. At page 291 the return of service on the company appears.)

But it has been argued that the pendency of the Reynolds suit, at the time the suit of Glenn vs. The National Express and Transportation Company was brought, in the Chancery Court of the city of Richmond, in 1871, and while that suit was being matured for decree, had the effect, *per se*, to render null and void all the proceedings in that suit, although no such defense was made from 1871 to 1880, in the Chancery Court, nor when the Express Company was again summoned and had an opportunity to be heard in 1886, when the Court was considering the making of the decree of March 26th, which is the foundation of the present suit.

Whatever effect the pendency of the Reynolds suit might have had, if it had been pleaded in the Richmond Chancery Court, or in the Circuit Court of Henrico county, we submit that it cannot be used in this suit.

This Court has said in the case of Harshman vs. The County of Knox, 122 U. S., page 218: "The conclusiveness of a judgment upon the rights of the parties does in nowise depend upon its form, or upon the fact that the Court investigated or decided the legal principles involved; a judgment by default, or upon confession, is in its nature, just as conclusive of the rights of the parties before the Court, as a judgment upon demurrer, or verdict."

How far a judgment or decree is conclusive, whether by default or upon verdict, the Court further declares:

"It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose."

It would seem from this, that if the Express Company was a party to the suit in the Chancery Court of the city of Richmond, in which the decree of December 14th 1880 was passed, (and it has been decided by the Court of Appeals of Virginia, that it was duly made a party to that suit,) the company, and through it, the stockholders of the company, who were sued in its name, and who were parties by representation, are concluded as to any defence that the Reynolds suit might have afforded.

But let us go a step further, and assume that it was the duty of the plaintiff in the suit in the Chancery Court of the city of Richmond, to have presented both sides of the case, and that if the company, when duly summoned, failed to make such defence as the pendency of the Reynolds suit might have entitled it to make, unless the plaintiff corrected the error or negligence of the defendant, and disclosed to the Court a defence which the defendant might have made, the plaintiff would have been guilty of fraud in obtaining the decree. Let us suppose even this, transposing the settled maxim of the law, so as to make it read, "*dormientibus non vigilantibus leges subveniunt*," and yet we maintain that such defence can not be made in this case.

If this be not settled by the decisions in Hawkins vs. Glenn, *ub sup.*, the case of Graham vs. Boston, Hartford and Erie R. R. Co., 118 U. S. 161, seems to leave no room for controversy. It will be observed that the proof in this case shows that the suit in the Richmond Court is now pending. The Record of that suit offered in evidence shows that fact.

In the case referred to above, a suit had been brought in a State Court in Massachusetts to foreclose a mortgage on a railroad, and there had been a decree to sell, and a sale actually made under that decree, the corporation having been a party to the suit in which the decree was passed. After the sale, but while the suit in the State Court was not yet concluded, certain stockholders under-

took to impeach the foreclosure proceedings, for fraud in conducting them, by bill filed in the U. S. Circuit Court for the Southern District of New York. In that case the attempt was not made as here, to assail the decree collaterally for fraud, but by original bill in a direct proceeding to impeach the decree.

This Court decided that this could not be done, and held that the stockholder was a party to the foreelosure suit by representation of the corporation, and that his only remedy was by application in the foreclosure suit.

So we submit that even if it be possible to hold that the failure of the plaintiff in the Richmond suit to make known to the Court the facts connected with the Reynolds suit, as shown by the Record in that suit, was tantamount to fraud in the prosecution of the suit in the Chancery Court of the city of Richmond, and tantamount to procuring the decree in that case by fraud, yet that defence can not be made in this suit, and could not be made even by a direct proceeding in the Supreme Court of the District of Columbia to impeach the Richmond proceedings for fraud, but must be made in the Richmond suit which is now pending. If either of these propositions be sound, it seems to be immaterial to inquire whether the Reynolds suit would have been a good defence had its pendency and the proceedings taken in it, been pleaded in the Richmond Chancery Court by the defendant or by the plaintiff for the defendant. It is sufficient to say that the Reynolds suit, in any view of it, cannot be used in this suit.

If we understand the proposition with reference to the Reynolds suit and the proceedings taken therein, it is supposed that it operated as a kind of self-executing restraint upon all other Courts, whether made known to them or not, rendering any action by them with reference to the affairs of the National Express Company, null and void *per se*. It is supposed that after the institution of the Reynolds suit it had that effect while it was pending,

and that such was its potency that it had that effect even after the Court that passed the order in the Reynolds suit, had finally dismissed it.

The Reynolds suit was a suit brought by a stockholder of the corporation in effect to wind up its affairs. It is quite certain that the Circuit Court of the United States in Equity had no jurisdiction in such a suit; but granting that it had, there never was for a moment any conflict of jurisdiction between the State and Federal Courts. The State Court was applied to by a creditor of the Company to decide as to the validity and effect of the deed of trust made by the Company, to have its debts ascertained, and also to levy an assessment upon the stock to pay its debts, as provided by the deed of trust, if it held that deed to be valid, and if it also held that the deed passed the unpaid capital stock.

No attempt whatever was made to disturb the possession of the receiver, or interfere with the property of the Company while the Reynolds suit was pending. When the proceedings in the suit in the Richmond Chancery Court had reached a stage at which it became necessary, in order to make that suit effectual, to operate on the property of the Company which the receiver had been ordered to take into his possession by the decree of December 31st 1866, made in the Reynolds suit, before attempting to do so, the Federal Court was applied to, its receiver made the report found at page 344, Record, and on that report, on motion of two of the defendants in the Reynolds suit, that suit, which had abated in 1867 by the death of the original plaintiff, in which a supplemental bill had been filed by Kelly three years afterwards, in 1870, without process or prayer of process, and without notice to any one, and which had been left without prosecution from August 27th 1870 to December 10th 1880, was finally dismissed and the receiver discharged.

Then when the Federal Court had finally relinquished all control or jurisdiction over the National Express and

Transportation Company and its affairs, and not until then, the Chancery Court of the city of Richmond first took action to affect the Company and its property. Its decree was founded upon the facts that had been established while the Reynolds suit was slumbering in the Federal Court, it is true, or rather upon proof that had been taken, but action by the Court on that proof and on the other proceedings was not taken until the Federal Court had ceased to have any jurisdiction over the Company, or control over its property.

And as for the assessment now sued for, the Reynolds suit had been dismissed nearly six years when the decree of March 26 1886 was passed.

It will be seen that no assessment on stockholders was ever made by the U. S. Court, in the Reynolds case, nor was the Court asked to make one. This is apparent from the Record, and has been so decided in Glenn vs. Macon, 32 F. R. page 7.

In that case, the Court will see that the use sought to be made of the Reynolds suit was to show that a call had been made by the U. S. Court which was barred by limitations. We are very far however from making the concessions mentioned by the learned judge in the opinion in Glenn vs. Macon, but that is immaterial now.

The test of the matter, it seems to us, is this: If on the 14th of December 1880, before the Chancery Court had rendered its decree of that date, the National Express and Transportation Company, or any person in its behalf, had undertaken to plead the Reynolds suit as that suit stood on that day, dismissed by the decree of the 10th of December 1880, as a bar in any way to the passing of the decree of the Chancery Court of the 14th of December 1880, what possible effect could the latter Court have given to such a plea? Could it be debarred from enforcing the terms of the deed of trust of September 20th 1866, by the fact that there had been such a suit as the Rey-

nolds suit and that suit had been dismissed by the Court in which it was brought? It is true that the preliminary proceedings in the Chancery Court of the City of Richmond which culminated in the decree of December 14th 1880 were taken during the time that the Reynolds suit was slumbering in the Circuit Court of the United States. But after the dismissal of that suit those proceedings were not invalid; they were precisely the same that the Chancery Court would have had to pursue had the suit in that Court not been instituted until after the dismissal of the Reynolds suit.

And it is submitted that the Circuit Court adopted the course most beneficial to the creditors of the company, and one of which neither the company or its stockholders have any right to complain.

Indeed when the company itself had adopted the trust deed of September 20th 1866 as the best mode of settling its affairs, and all its creditors had accepted that mode of relief by applying to the Chancery Court to enforce the execution of those trusts, it would seem plain that it would have been in the last degree inequitable to deprive them of such a mode of settlement of the affairs of the company, at the instance of a single stockholder who had so long enjoyed the immunity afforded by the dormant decree of December 31st 1866.

The decree in Richmond has been made the object of what this Court calls "a direct attack" in the Court of Appeals of Virginia. In the suit of Hambleton vs. Glenn, 85 Va. R., p. 901, (which is the direct attack on the decrees of the Chancery Court and the Circuit Court of Henrico County, referred to by this Court in Hawkins vs. Glenn,) an attempt was made to review and reverse those decrees upon every ground that the ingenuity of counsel could devise, but the fact that the "Reynolds case" had once been pending was not one of them.

The whole subject of the Reynolds suit has been most fully and ably considered by Judge Thayer, in the Circuit

Court of the United States for the Eastern Division of ~~the Eastern District of~~ Missouri in the cases of Glenn vs. Liggett, &c., to which the attention of the Court is most respectfully invited. We can add nothing to what Judge Thayer has said.

See 47 F. R., No. 7, page 472.
See also Yonley vs. Lavender, 21 Wal. 276.
Heidritter vs. Elizabeth Oil Cloth Co., 112 U. S., pages 294–304–305.
6 Fed. Rep., 837–8.
Calhoun vs. Lanaux, 127 U. S., 639.

We submit, therefore, that there was error in the ruling of the General Term affirming the ruling of the Special Term admitting the Reynolds record as set forth in the first assignment of error, because that record was irrelevant, immaterial in itself, because there is nothing in it to warrant the instruction which is set out in the fifth assignment of error, and because said record is inadmissible in this suit for any purpose.

The second assignment of error is that the General Term erred in affirming the ruling of the Trial Court, in refusing the instruction asked by the plaintiff in error, as set out in the second bill of exceptions (page 346,) as follows:

"That this action having been brought within three years after the decree of the Circuit Court of Henrico county, passed on the 26th day of March 1886, the plea of the statute of limitations constitutes no defense to the same."

This instruction is in accordance with the decision of this Court in Hawkins vs. Glenn (131 U. S. *ub sup.*) The suit is to recover the assessment made by that decree, and was brought within three years after its date.

If that decree was valid and binding, it created an obligation on the stockholders for the first time, and the statute began to run from that date.

The third assignment of error is that the General Term erred in affirming the ruling of the Special Term refusing the instruction asked by the plaintiff, as set forth in the plaintiff's third bill of exceptions, p. 347, and also in the third assignment of error, p. 352, as follows: "That the decree of the Chancery Court of the City of Richmond, passed July 21st 1883, appearing in the transcript of Record marked exhibit A, for identification, constitutes no defense to this suit, and does not relieve defendant from liability for the amount of the assessment made by the decree of March 26th 1886, offered in evidence in this case."

The decree of July 21st 1883, referred to in the instructions, known in this case as the "compromise decree," and is found at pages 228-229.

This decree was passed by consent while certain petitions of stockholders to review and reverse the decree of December 14th 1880 were pending, and it provided that "while not suspending the operation of the decree of December 14th 1880, but reserving all questions as to that decree and the petitions to review and reverse it, all stockholders who should pay, within six months from the date of the decree, twenty-five per cent. of the original amount of the subscription, with interest at six per cent. from thirty days from the date of the decree, with all costs of suit brought by the trustee, should receive a full release from further liability.

It was hoped that such an opportunity to be released would be made use of by a sufficient number of shareholders, to provide enough money to pay the debts of the company, and thus save the vexatious delay and enormous expense of a protracted and costly litigation.

In this the creditors have been grievously disappointed, while a considerable number of stockholders took advantage of the decree (see order of December 9th 1884, page 234, Record,) others have continued to resist the enforce-

ment of the decree, while some have renewed the effort to review and reverse the decree of December 14th, as well as that of March 26th 1886, upon the same grounds that were assigned in the petitions referred to in the decree of July 21st 1883.

These last attempts have been resisted to the end and have all failed.

See Petition of Jennings, &c., page 238.
Decree of March 4th, 1885, page 263.
Opinion of Court, page 264–267.
See also Hambleton vs. Glenn, 85 Va. R. page 901.

This last case put an end in Virginia to the attempts to impeach the decrees levying assessments.

It has been argued that inasmuch as the compromise decree released those who took advantage of its terms from the payment of part of their liability, the effect was to increase the assessment of those who refused to take the benefit of the decree.

But the answer is, that even if the loss occasioned by the compromise decree was not considered in making the second asssessment, and if that assessment was larger than it would have been but for the compromise decree, it would render the decree making the second assessment erroneous and not void, but would not enable the stockholders to assail it collaterally.

This whole matter has been fully considered by the Court of Appeals of Maryland in—

Hambleton vs. Glenn, 72 Md. 331.
Same vs. same, 72 Md. 351.

The compromise decree was afterwards rescinded by the Court by its order passed December 9th 1884 (Record, page 234), by which the petitions filed by the stockholders were dismissed, and the trustee is directed "to proceed as if the decree of July 21st 1883 (the compromise decree) had never been entered."

The fourth assignment of error is the affirmance by the General Term of the ruling of the Trial Court granting the instruction asked by the defendant, set out in the fourth bill of exceptions, "that the plaintiff cannot maintain this action as brought in his own name and the jury must find for the defendant."

The fifth assignment of error is the affirmance by the General Term of the instruction given by the Trial Court, set out in the fifth bill of exceptions: "On the evidence, I must instruct you to find a verdict for the defendant."

The seventh and ninth assignments of error cover the same ground as the fourth, and we shall discuss them together.

The eighth assignment of error is that the General Term erred in affirming the ruling of the Trial Court that the plaintiff cannot sue in his own name, because by affirming said ruling the General Term refused to give to the decree of the Virginia Courts, by which the assessment was made, the force and effect to which said decree is entitled under the laws of the State of Virginia.

The fourth, fifth, seventh and ninth assignments of error all present the question of the right of the plaintiff to maintain this suit in his own name.

The fifth assignment presents other questions besides, which will be discussed separately, and the eighth assignment presents the question of his right to sue in his own name, as arising from the force and effect of the decree by which the assessment sued for was levied.

The question presented by the sixth assignment of error will necessarily depend on the decision of the Court on the errors specially assigned, and will require no separate discussion.

We shall discuss first the general question of the right of the trustee to maintain this action in his own name, apart from the effect of the decree of the Circuit Court of Henrico county on that question, as that effect has been established by the Court of Appeals of Virginia.

The General Term holds that the right of action in this case passed to the trustee by the deed of trust executed by the company on the 20th of September 1866, and by the appointment in the room of the trustees named in that deed, of the plaintiff in error.

The Court, therefore, holds that the right of action having been acquired by assignment, the suit cannot be maintained in the name of the assignee.

The question as to the right of the trustee to sue in the District of Columbia in his own name, was brought before two of the justices of the Supreme Court of the District of Columbia, the late Judge Merrick and Judge Hagner, both of whom decided that the trustee could maintain such an action as this in his own name. Upon argument before the other three of the five judges of that Court it was held that he could not, but must sue in the name of the company if he sued at law, or proceed in equity. This opinion was given upon the theory that the cause of action set forth in the declaration became vested in the original trustees under the deed of trust of the 20th of September 1866, and that the present plaintiff succeeded to that cause of action by his appointment under the decree of December 14th 1880, and that he was therefore an assignee of a chose in action, who could not maintain a suit in his own name at common law.

The decree of December 14th 1880, which will be found beginning at page 181 of the Record, after establishing certain debts against the trust estate, removing the original trustees and appointing the present plaintiff in their stead, proceeds to determine that an assessment is necessary in order to pay the debts of the company; and at page 199 of the Record the following passage occurs: "and it further appearing to the Court that the said company has long since ceased and abandoned its business, and that for about fourteen years there has been no meeting, either of the stockholders or of its board of directors,

it is adjudged, ordered and decreed that a call and assessment be and the same are hereby made upon the capital stock and stockholders of the said National Express and Transportation Company, of thirty per centum of par value of said stock, being thirty dollars on each and every share thereof; and that the stockholders of said company, and *each and every of them* and their legal representatives and assigns be, and they are hereby *severally* required to pay the several amounts hereby called for and assessed, to the said John Glenn of the city of Baltimore, in the State of Maryland, substituted trustee in said deed of trust from said company, of the 20th of September 1866; and the said trustee is hereby authorized and directed to collect and receive the said call and assessment, and to take such prompt steps to that end, by suit or otherwise, and in such jurisdictions as he may be advised."

The decree of March 26th 1886, (page 287 of Record,) uses similar language in making the assessment now sued for.

There can be no doubt that the decree of December 14th 1880 and that of March 26 1886 created a duty on the part of the stockholders of the company, a duty to perform the decrees just as effectually as such a duty would have been created by a call made by the President and Directors of the Company.

The unpaid stock was as much a part of the assets of the company, while in the hands of the stockholders, as it would have been had it been in the treasury of the company.

County of Morgan vs. Allen, 103 U. S. 509.

Now it is conclusively established by the decree of December 14 1880 that the *legal title* to this uncalled capital passed to the trustees named in the deed of trust of September 20th 1866, but that they had no power to make a call upon the stockholders for its payment.

To entitle the trustees to sue, it is settled by that decree, and by many decisions of this Court, a call had to be made by the company, or failing the company to make a call, one had to be made by a Court of Equity.

In Scoville vs. Thayer, 105 U. S. page 155, this Court has said: "When stock is subscribed to be paid upon the call of the company, and the company refuses or neglects to make the call, a Court of Equity may itself make the call if the interest of the creditors require it. The Court will do what it is the duty of the company to do. But under such circumstances, before there is any obligation upon the stockholder to pay, without an assessment and call by the company, there must be some order of a Court of competent jurisdiction, or, at the very least, some authorized demand upon him for payment.

"In this case there was no obligation resting on the stockholder to pay at all until some authorized demand on behalf of creditors was made for payment. The defendant owed the creditors nothing, and he owed the company nothing save such unpaid portion of his stock as might be necessary to satisfy the claims of the creditors."

Baron Parke states the contract between the stockholders and the company in the same way in the case of South Staffordshire R. R. Co. vs. Burnside, 5 Exchq. 129:

"The contract in which the shareholder's obligation is founded, is not to pay a certain fixed sum upon a future contingency, but such sum or sums as may be required from himself, and all other shareholders from time to time, not exceeding a certain sum, and regulated by the wants of the company."

It is submitted therefore that in the present case, when the assignment of September 20th 1866 was made, no right of action existed on the part of the company to recover anything from the stockholders. So far from assigning a right of action by the deed of trust, the com-

pany had none to assign. It assigned the legal title to its uncalled stock, but the right to sue for it never arose until the decree making the assessment. That decree created the duty to pay which could be enforced by suit, and by its express terms, it created the duty to pay to the plaintiff in error.

He did not acquire the right to sue otherwise than by the decree making the assessment, and it would be very strange if the Court had the power to bind the stockholder to pay, and yet had no power to decree to whom payment should be made. In the case of extinct companies, unless the Court could appoint a payee, it could make no assessment at all.

But the right of the creditors of the company to compel the stockholders to pay the uncalled stock, is different from and superior to that of the company.

There are cases in which the company may preclude itself from enforcing payment from stockholders *for its own purposes*, by contract between it and them.

This has been decided by this Court in Scoville vs. Thayer, 105 U. S.

Such a contract, however, it is there said, would have no effect as against the claim of creditors, who could set it aside.

In the case referred to, and also in the case of Sawyer vs. Hoag, 17 Wall. 619–620, the difference between the obligation of the stockholder to the *company*, and that to the representative of the *creditors* of the company, is clearly pointed out. It is held that, in case of insolvent corporations, the unpaid capital stock is a trust fund to pay debts, and that no device can defeat the right to have it so applied, although the *company* may by contract, preclude itself from enforcing payment *for its own purposes.*

The decree of December 14th 1880 appointed the plaintiff in error as the successor to the original trustees named in the deed of September 20th 1866, and vested in him the

legal title to the uncalled stock. He became the representative of the rights of creditors against the unpaid stock as fully as if he had been an assignee in bankruptcy. The decree levying the assessment unquestionably created a duty on the part of the stockholders to pay, and it was not until the assessment was made, that such a duty arose at all. Out of the duty created by that decree, there arose an implied assumpsit on the part of the stockholder to pay, and it is plain that that assumpsit never arose until the decree. It was an assumpsit to pay so much of the unpaid capital as the stockholder was called upon to pay, and that assumpsit arose from the decree. When it arose, the legal title to the whole fund had been transferred to the plaintiff in error. It belonged to him as substituted trustee under the deed. On what principle, then, can it be maintained that the decree created an assumpsit on the part of the stockholder *to the company?* The trustee owned the fund, but until an authorized call was made the stockholder was entitled to hold it. When that call was made, is it conceivable that it revived the legal right of the company to the fund that it had transferred to the trustee before the call?

The argument leads to the result that while the deed of trust transferred the legal title to the fund to the trustee, the call made by the decree raised an obligation on the part of the stockholder to pay so much of the fund as was called for *back to the company.*

We maintain, on the contrary, that when the call was made the right of action arose, and not until then, and that when the duty to pay the call arose, the implied promise to pay was a promise in favor of the trustee as owner of the legal title to the fund from which the call was made.

The unpaid stock had ceased to be the property of the company for its own purposes. The rights of the creditors, superior to those of the company, had atached to it, and the duty to pay was a duty owing to the trustee as

holder of the legal title, and as representing the superior rights of the creditors.

If the decree making a call created a duty to pay it for the purposes of the call, we respectfully submit that the trustee has the right to sue for it in his own name in assumpsit upon the ground that the call for payment of part of this trust fund in the hands of the stockholders, converted so much of that fund as was called for into money to which the trustee was entitled *ex æquo et bono*, and that he could maintain assumpsit for it in his own name.

It is said, by a very high authority upon the subject of companies of this kind, in respect to the right of action accruing upon calls and other liabilities, that the person to sue is the person to whom the duty is owing, and the person to be sued is the person who owes the duty. "Every action," says Mr. Justice Lindley, "presupposes some wrong done, and this again presupposes some duty owing by some one towards some one else, and a breach, actual or contemplated, of such duty. For such breach the person to sue is the person to whom the duty is owing, and the person to be sued is the person in whom the duty resides."

> 1 Lindley on the Laws of Partnership, including its application to Companies, American Ed., page 467, Eng. Ed., page 654.

And it is obvious that if by force and effect of the decree, and the failure of duty thereunder, a complete and perfect cause of action arose to the trustee in Virginia, that cause of action was complete and perfect in him everywhere, not only in the United States, where, by the Constitution and the Act of Congress, the same faith, credit and effect are required to be given in every other State to judicial proceedings, judgments and decrees, to which they are entitled in the State of their rendition, but in every other jurisdiction in a civilized country recognizing the laws of international comity. We, therefore,

respectfully submit that upon the breach of duty by the defendant in error in failing to pay the call to the trustee, a right of action arose directly to the trustee, upon which he was entitled to bring assumpsit in his own name, in the Supreme Court of the District of Columbia, to recover from the defendant in error the amount of the call due upon his stock.

THE RIGHT OF RECOVERY IN AN ACTION OF ASSUMPSIT IS NOT RESTRICTED TO THE POSSESSION OF A LEGAL TITLE, AND IT IS SUFFICIENT IF THE PLAINTIFF IS "*ex æquo et bono*" ENTITLED TO RECEIVE THE MONEY DUE, AND THERE NEED NOT BE ANY DIRECT PRIVITY OF CONTRACT BETWEEN THE PLAINTIFF AND THE DEFENDANT FOR RECOVERY UPON THE COMMON MONEY COUNTS.

For this proposition, see 2 Greenl. Ev., sec. 102; Hawk vs. Saunders, Cowper, 290; National Bank vs. Grand Lodge, 98 U. S. 124. In that case the Supreme Court said: "We do not propose to enter at large upon a consideration of the inquiry, how far a privity of contract between a plaintiff and defendant is necessary to the maintenance of an action of *assumpsit*. The subject has been much debated, and the decisions are not reconcilable. No doubt the general rule is that privity must exist. But there are confessedly many exceptions to it. One of them, and by far the most frequent one, is the case where, under a contract between two persons, assets have come to the promisor's hands, or under his control, which in equity belong to a third person. In such case it is held that the third person may sue in his own name. But then the suit is founded rather on the implied undertaking the law raises from the possession of assets than on the express promise."

And in Gaines vs. Miller, 111 U. S. 395, in dismissing a bill in equity brought by a legatee against the representative of an executor *de son tort* (who had wrongfully appro-

priated the assets of the testator), upon the ground that equity had no jurisdiction, because the action of *assumpsit* was the proper remedy, the Court said: "It is, therefore, simply a case of money had and received by him for the use of the appellant, and a declaration in *assumpsit* on the common counts, would have fully stated the appellant's cause of action. *Whenever one person has in his hands money equitably belonging to another, that other person may recover it by assumpsit for money had and received.* Pickard vs. Bankes, 13 East. 20; Spratt vs. Hobhouse, 4 Bing. 173; Isreal vs. Douglass, 1 Hen. Bl. 239; Hale vs. Marston, 17 Mass. 575; Claflin vs. Godfrey, 21 Pick. 1. The remedy at law is adequate and complete."

If *assumpsit* would lie by a legatee against an executor *de son tort*, between whom there is no privity of contract whatever, except that which the law raises from the duty of payment, *ex aquo et bono*, why will it not lie by a trustee against a holder of trust funds, dedicated alike by the law and his own act to the payment of his own debts, which the trustee is the hand to collect? Is not this money—trust money—in the hands of the defendant, to which the trustee is at least equitably entitled for the purposes of the trust?

While we believe that what has been said is sufficient to establish the right of the plaintiff in error to maintain this suit in his own name, we respectfully call the attention of the Court to another view of the case, founded upon well settled principles of common law. The view about to be presented depends upon the legal effect upon the stockholders of the company of the deed of trust of September 20th 1866, and that deed has been construed as to its effect upon the stockholders, by the Court of Appeals of Virginia.

It has always been conceded that when a chose in action has been assigned, if the debtor expressly or impliedly recognizes the right of the assignee, he comes under an

implied promise to pay the assignee upon which the latter may maintain a suit in his own name.

In the case of Tiernan vs. Jackson, in 5 Peters, beginning at page 580, the Court say at page 597, "the general principle of law is that choses in action are not at law assignable, but if assigned, and the debtor promises to pay the debt to the assignee, the latter may maintain an action for the amount against the debtor as the money received to his use."

See also, Sentees vs. Hubbard, 4 Esp., 203.

"All that is necessary is, that there shall appear to be an expressed or implied promise on the part of the debtor to pay the debt to the assignee." In this case the decree of the Chancery Court established conclusively that the assignment made by the company on the 20th of September 1866, passed to the assignees the right to the unpaid subscriptions in the hands of the stockholders.

Now who were the parties to that assignment? By the charter of the company the members or stockholders were authorized to contract and be contracted with in the name of the company. If then the assignment of September 20 1866, passed the unpaid subscriptions to the trustees, were not these unpaid subscriptions passed to the trustees by the consent of every member of the company? Did not every stockholder, that deed being valid, consent that the money remaining unpaid in his hands should be payable to the trustees named in the deed? And if that be so, is it not clear that every stockholder expressly agreed that if it should be necessary to call upon him to pay more of his subscription than had been paid at the time the deed was executed, it should no longer be payable to the company, but that it should be payable to the trustees? Did he not consent to the assignment and expressly promise to pay to the trustees, and if so, could they not maintain the action in their own names?

The Chancery Court of the city of Richmond decided that while the legal title to the uncalled subscription

passed to the trustees, no power to make a call upon the stockholders was vested in them, but that that power remained in the company as one of its corporate franchises which it could not assign. That being the legal effect of the deed when the company executed it, it came necessarily under an implied covenant to make the call in order to enable its trustees to bring suit in case a call should be necessary to effect the objects of the deed, that is, the payment of the creditors of the company. It would seem therefore that as the deed itself is only the contract made by all the stockholders in the corporate name, in assenting to its terms, each of them assented to the transfer by the company of the legal title to the money remaining uncalled in his hands and assented to the other matter which was absolutely indispensable to the effectual execution of the deed, namely, that he would when called upon, pay to those assignees for the purposes of the deed.

This view of the effect of the deed of trust is taken by the Court of Appeals of Virginia in Lewis' Admr. vs. Glenn, 84 Va. R. 954, and we submit that it settles the law as to the effect of that deed as to all stockholders. It settles the law that such a deed, made by a Virginia corporation, carries with it the assent of each stockholder to the assignment, from which assent, arises an implied promise to pay the assignee. Such an implied promise entitles the assignee to sue in his own name at common law.

The argument on this question of the right of the plaintiff in error to sue in his own name, has been presented upon general principles, and without reference to the eighth assignment of error, page 353, Record. The error there assigned is in substance that the General Term erred in not giving to the decree of March 26th 1886, the force and effect to which that decree is entitled under the law of Virginia, in this, that said decree entitled the plaintiff in error to sue in his own name.

The Court of Appeals of Virginia, in the case of Lewis' Administrator vs. Glenn, 84 Va. 954, held that the decree of December 14th 1880, by which the first assessment was levied, entitled the plaintiff in error to maintain a suit in his own name. This decision was made in a case in which the question was directly raised whether under the statute of Virginia, authorizing an assignee to sue in his own name, the present plaintiff in error could maintain such a suit. The Court held that he could sue in his own name *by force of the decree of December 14th* 1880, independently of any statute. This Court refers to that decision as establishing the right in the case of Hawkins vs. Glenn, 131 U. S., and adds a reference to the decision of the Court of Appeals of Maryland in Glenn vs. Williams, 60 Md. 93.

We submit that if the effect of the decree of March 26th 1886, in Virginia, was to entitle the trustee to sue for the assessment in his own name, it was error in the General Term to refuse to give the same effect to that decree in this case.

It is therefore respectfully submitted that the General Term erred in the particulars of error assigned in the fourth, fifth, seventh, eighth and ninth assignments of error. If this be so, the error sixthly assigned in affirming the refusal of the trial Court to grant a new trial is established.

The fifth assignment of error, which is set forth in the fifth bill of exceptions, page 347, involves all the questions we have discussed, and perhaps requires us to consider all questions that may arise in the record of the case in the Trial Court.

The fifth assignment of error, besides presenting the question already discussed as to the right of the plaintiff in error to sue in his own name, may also present the question as to the validity of the decree in the Circuit Court of Henrico county, in equity, by which the assessment sued for was levied.

The point immediately assigned as error in the fifth assignment of error, is the affirmance by the General Term of the following instruction given by the Trial Court to the jury.

"On the evidence, I must instruct you to find a verdict for the defendant."

We say that this instruction *may* be considered as raising the question as to the validity of the decree levying the assessment sued for, or rather as raising the only question affecting that decree that can be raised in this case, and that is the question as to the jurisdiction of the Court to pass the decree. Although that question has been raised and decided repeatedly, and by many Courts, State and Federal, during the course of this extended litigation, one of the peculiarities of the litigation itself is that the stockholders of this company do not seem to be at all affected by judicial decisions, unless those decisions be made against them personally in such a way that they can be enforced by execution. The same defences made and overruled in the case of Glenn vs. Williams in 1882, have been made and argued with the utmost apparent earnestness in a great number of cases that have been tried since, and the Appellate Courts of no less than five States have been called upon to pass upon the same defences, some of them more than once.

The stockholders of this company apparently cannot be convinced that their contracts impose any obligation, until they are approached by the marshal with an execution in his hands. In every case we are met by the same stale charges of fraud in obtaining the decree, and of the hardship of the stockholder's lot, as if there were no hardship on the part of the multitude of poor creditors who trusted the company on the credit of its means as proclaimed to the world by its stockholders.

It is rather remarkable that those who indulge in this kind of vituperative argument when sued, have failed to

make good their charges in the eleven years that have elapsed since the first assessment was levied.

Many petitions have been filed in the Chancery Court of the city of Richmond and in the Circuit Court of Henrico county to review and reverse the decree of December 14th 1880 and March 26th 1886, and one of those petitions found its way to the Court of Appeals of Virginia, Hambleton vs. Glenn, (85 Va. Rep., page 901,) in which what this Court, in Hawkins vs. Glenn, 131 U. S., calls a "direct attack," was made upon the decrees levying assessments, and those decrees were sustained by the Court of last resort.

In the leading case of Glenn vs. Williams, 60 Md. 95, it will be seen that the pendency of the Reynolds suit was relied upon as it is here, and the defense disposed of by the Court of Appeals of Maryland.

See opinion of the Court, page 126.

That the Court referred to the Reynolds suit in what is said at page 126, will appear by reference to the argument of counsel for Williams, page 104. The record in that case contains a plea of the pendency of the Reynolds suit at the time the suit in the Chancery Court was instituted.

In the case of Hambleton vs. Glenn, every objection to the decree was made that the ingenuity of counsel could devise, except those objections that had already been disposed of by the Court of Appeals of Virginia.

Among the objections *not* made in the Hambleton case was that we are now discussing, viz: that the Chancery Court did not acquire jurisdiction over the company by the service of process shown in the Record.

The Circuit Court of Henrico county had passed upon that question in deciding what is called the Jennings petition, page 238, Record. See decree of March 4th 1885, page 263, and opinion of the Court, pages 266 and 267, Record.

The Court of Appeals of Virginia also passed upon it directly in the cases of Lewis' Admr. vs. Glenn, 84 Va. R. 969, 970, and Vanderwerken vs. Glenn, 85 Va. R. 9.

In the Lewis case the Court of Appeals of Virginia show what is sufficient service of process on the corporation under the laws of that State, and hold that service on Joseph R. Anderson, a director, was sufficient under the circumstances of this case. Besides this service, there was also process by publication, which was required by law in cases in which personal service on an officer or agent could not be made.

Both these modes of bringing the company into Court were pursued.

See process of publication, pages 60–61, Rec.

The Court will see that Anderson was served with process as a director, and also process was served on M. B. Porteaux, cashier.

See Subpœna, page 56.
Return of Sheriff, pages 56–57.

Anderson answered, not denying that he was a director in so many words, but making it necessary to establish that fact.

See his Answer, page 62.

Proof was taken. See deposition of Anderson, page 107; Extracts from minutes of Board of Directors, page 211, Record, where the fact of Anderson's election, and his participation in the proceedings of the board appear.

The Chancery Court, upon this evidence, decided that the case had been regularly matured for hearing. (Page 181, Record.)

The Court, therefore, has decided upon the sufficiency of service of process on the company, and its decree can no more be questioned collaterally on that point than in any other matter decided by it. The late Chief Justice of

the United States, sitting in the Circuit Court for the District of West Virginia, decided that the matter of the sufficiency of service of process on the company was *res adjudicata*.

See also Glenn vs. Williams, 60 Md. 110, 111.

And it has been so held in many other Courts.

The question was not raised in Hawkins vs. Glenn, 131 U. S., although the whole Virginia Record was in evidence, nor was it raised in the Hambleton case, as has already been remarked.

The question has also been raised whether the case was properly removed from the Chancery Court of the City of Richmond to the Circuit Court of Henrico county. But the language of the Virginia statute on the subject is plain, and the validity of the proceedings in the Circuit Court of Henrico county after removal, has been recognized by the Court of Appeals of Virginia in the cases of Lewis and Vanderwerken, (84 and 85 Va., *ub sup.*); and the question was not suggested in the case of Hambleton vs. Glenn, 85 Va. 901, in which the Court of Appeals of Virginia upheld the whole proceedings in both the Chancery Court of the City of Richmond and the Circuit Court of Henrico county. In fact there are many instances in the Virginia Reports of removals of cases from the Chancery Court of the City of Richmond to Circuit Courts, and no doubt has ever been suggested of the regularity of such removals.

It is therefore respectfully submitted that the instruction of the Trial Court set out in the plaintiff's fifth bill of exceptions and the fifth assignment of error, is not warranted by any evidence in the case, and that, on the contrary, the fact being admitted that the defendant in error is a stockholder, his liability was conclusively settled by the decree of March 26 1886, levying the assessment, and the Court ought to have instructed the jury that on the

admission that the defendant is a stockholder, their verdict should be for the plaintiff.

It is respectfully submitted that the judgment of the General Term should be reversed for all the errors assigned.

CHARLES MARSHALL,
JOHN HOWARD,
For Plaintiff in Error.

Office Supreme Court U. S.
FILED.
JAN 11 1892
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 1231.

JOHN GLENN, TRUSTEE, PLAINTIFF IN ERROR,

vs.

J. CARTER MARBURY.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Brief of M. F. Morris on behalf of the defendant in error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

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The counsel, who files this brief, may be permitted to state that he does not appear so much for the defendant in error as for other parties against whom similar suits are pending in the name of the same plaintiff, which will be affected by the decision in this cause; and that his appearance is by the courtesy and with the consent of the defendant in error and of J. J. Johnson, Esq., who is the actual counsel for the defendant. It is for this reason that he files his separate brief in the cause.

The case is a suit at common law, instituted by the plaintiff in error, who was also the plaintiff in the lower court in

his alleged capacity of substituted trustee under a deed of trust executed in 1866 by the National Express and Transportation Company, an insolvent corporation of the State of Virginia, long since defunct; and its purpose is to recover from the defendant the amount of fifty per centum of the defendant's unpaid subscription for one hundred shares of the capital stock of said company.

The judgment of the general term of the supreme court of the District of Columbia was against the plaintiff on the ground mainly that, as the assignee of a *chose in action*, he could not maintain suit in the District of Columbia in his own name. But in the trial court there were other questions raised by the exceptions taken in the case.

I.

STATEMENT OF CASE.

The National Express and Transportation Company was an organization chartered by the State of Virginia, in 1865, shortly after the termination of the war of secession. There had been an act passed in 1861 incorporating the Southern Express Company; and under an amendment to that act passed on December 12, 1865, the National Express and Transportation Company was organized (Rec., pp. 214–217). After a career of about nine months of most extraordinary corporate mismanagement, the company became utterly bankrupt; and, in an apparent attempt to secure its creditors, executed a deed of trust to three trustees, John Blair Hoge, John J. Kelly, and C. Oliver O'Donnell, which purported to convey to these trustees all the assets of the company, but at the same time provided for the company's remaining in possession of them (Rec., p. 35–37). This deed bears date on September 20, 1866. The corporate organization was kept up for a few months longer; it does not appear definitely how long; and it was then entirely abandoned

and was never afterwards resumed. Indeed, the very fact of the existence of the organization had almost passed away from the memory of its unfortunate stockholders, as well as of the public at large, until they were forcibly reminded of it about the year 1883, about seventeen years after its demise, by the demand of the plaintiff in error upon them for payment of their subscriptions. First, in that year, a demand was made for the payment of thirty (30) per centum of the unpaid subscriptions; and afterwards, in the year 1886, a demand was made for the payment of fifty (50) per centum of the unpaid subscriptions. It is upon this last demand that the present suit is based (Rec., p. 9).

There seems to have been considerable litigation in various States, principally in Maryland and New York, over the deed of trust to Hoge, Kelly, and O'Donnell; and these trustees seem finally to have abandoned all attempts to proceed under it.

On August 8, 1866, while the company was in practical existence and before the execution of the deed of trust which has been mentioned, a stockholders' bill was filed in the circuit court of the United States for the district of Virginia, praying for an injunction against the illegal acts of the directors, the appointment of a receiver to take charge of the affairs of the company, and for the winding up of the affairs of the company, the payment of its debts and liabilities, and the distribution of any surplus assets among the stockholders (Rec., p. 303–311). Upon this bill there was due service of process on the company; and an answer to it was filed by the company and by John J. Kelly, one of the directors (Rec., p. 315–322, 326). Thereupon an injunction was issued to restrain the company and its directors from making any further calls or assessments on the capital stock and from taking any further steps to enforce payment of the subscriptions, and also to restrain the company and its directors from carrying into effect certain specified contracts or agreements (Rec., p. 327). And subsequently, on December 31, 1866, the deed of trust

made by the company having been brought to the notice of the court, a receiver (Westel Willoughby) was appointed to take charge of the affairs of the company and to take all its assets and property of every kind into his control, and especially to reclaim and receive from the trustees under the before-mentioned deed of trust all the property and rights of every kind sought to be transferred by the said deed to said trustees; and said trustees who had appeared in the case (Rec., p. 338) were ordered and required to surrender the same. And among other things the receiver was required and directed to proceed to collect any and all sums due from the stockholders upon their shares of the capital stock (Rec., p. 332–334). The receiver gave bond and entered upon the performance of his duties (Rec., p. 335, 344).

One Washington Kelly became a party to the bill as complainant on February 2, 1870 (Rec., p. 336). Subsequently, on August 22, 1870, Reynolds, the original complainant, having died in the meantime, Washington Kelly filed a supplemental bill and bill of revivor in the cause, praying that the trustees in the deed of trust should be required to surrender all the assets in their possession, and that the receiver should proceed with the performance of his duties (Rec., p. 337–344).

The record does not disclose what further proceedings were had upon this supplemental bill and bill of revivor; it seems to be somewhat defective at this point. But the receiver remained in the performance of his duty until December 10, 1880, when he made his report and was discharged (Rec., p. 344–345).

Notwithstanding the fact that, under the bill of Reynolds and the supplemental bill filed by Kelly, the United States circuit court had brought the company and its affairs under its own exclusive control and jurisdiction, and that its receiver was in possession and vested by the court with title to all the assets of the company, including specifically assessments upon stock and choses in action, one W. W. Glenn,

who seems to have obtained a judgment at law against the company in Baltimore (Rec., p. 42–55), filed, on November 28, 1871, in the chancery court of the city of Richmond, in the State of Virginia, one of the courts of that State, a bill in equity, in the nature of a creditor's bill, against the company and the trustees under the before-mentioned deed of trust, the alleged purpose of which was to enforce his judgment obtained in Maryland (Rec., p. 25–34). It prayed for a receiver to collect the assets of the company, to collect from stockholders the amounts due upon their shares of stock, and to bring the proceeds into that court. It entirely ignores the fact that proceedings to wind up the affairs of the company were pending in the Federal court.

The service of process under this bill was upon two alleged directors of the company (Rec., p. 26), which was not sufficient under the laws of Virginia, which required such service, in the absence of the president, to be made upon the cashier or treasurer, and only allowed service on a director in the absence of both president and treasurer (Code of Virginia of 1873, chap. 166, sec. 7, which contains the law in force at the time). But this bill was practically abandoned; and no other proceedings seem to have been had in the case for nearly *eight* years (Rec., p. 38).

On August 4, 1879, an amended and supplemental bill was filed in this same chancery court of the city of Richmond, in the name of John W. Wright, sheriff of the city of Richmond, and, as such, administrator in Virginia of William W. Glenn, who seems to have died in the meantime; and in this amended and supplemental bill, besides the relief prayed in the original bill, the removal was asked of the trustees designated in the deed of trust already mentioned and the appointment of a new trustee in their place; and the court was asked to carry this deed of trust into effect (Rec., p. 38–42). In this supplemental bill, as well as in the original, the proceedings in the Federal court were ignored.

There was an attempted service of process under this bill

to bring the company into court. This service was upon one M. B. Poiteaux, who is stated in the bill to be "cashier and treasurer of said company" (Rec., p. 41), but who is shown by his own answer in the case to have been merely "the cashier of the first division of the said company" (Rec., p. 58), a local and not a general officer, such as was contemplated by the statute. And it is somewhat remarkable that he immediately turns up as a creditor of the company and an apparently swift witness for the complainant (Rec., p. 105, 106). Service was also attempted upon Joseph R. Anderson, alleged in the bill to have been a director, but who is shown conclusively by the testimony to have resigned from the directory before the company was disbanded (Rec., p. 62, 63). Service was also had on one Lorenzo Norvell, who is stated in the bill to have been a director of the company; but the service was upon him individually, and not to bring the company into court (Rec., p. 57); and it is not claimed that this was service upon the company.

There was no other service whatever upon any one, although there seems to have been an obscure advertisement in the advertising columns of a local newspaper; and the stockholders had no other notice whatever of the intended proceedings.

Thereafter the proceedings were had with practically closed doors and in secret; and claims, of which the vast majority are known to be fraudulent, were brought forward, *without proof of any kind* except in three cases, and evidently made to swell a grand aggregate of indebtedness so as to give the basis for the proceedings that were intended to be subsequently taken (Rec., p. 70–104). It is believed that an examination of the report of these claims will disclose a scandalous case of fraud. These *ex parte* proceedings—for such we think we are justified in calling them—finally, on December 14, 1880, resulted in a decree, in which it was adjudged that the deed of trust to Hoge, Kelly, and O'Donnell was valid, and that by it the right to collect and receive the

unpaid subscriptions of stockholders had become vested in these trustees; and then it proceeded to remove the trustees, and to appoint the plaintiff John Glenn in their place. The commissioner's report of the debts of the company was ratified; an assessment of thirty (30) per centum was levied on the unpaid subscriptions to the capital stock; and the substituted trustee was directed to collect these assessments, and to report his proceedings in the premises to the court and to bring the money into court for further order (Rec., p. 181–200).

This decree, it will be noticed, was passed December 14, 1880. Just before it was passed, however—four days before; that is, on December 10, 1880, as heretofore stated—counsel for the complainant in this cause—whether he then for the first time discovered the pendency of the Reynolds case in the United States circuit court or not, does not appear—went into the circuit court—again *ex parte* and without notice to any one—and procured an order of that court discharging its receiver (Rec., p. 345).

The record shows that, after the decree of December 14, 1880, there was a supplemental report made by the commissioner, confessedly upon his own motion and without any authority whatever from the court (Rec., p. 209–214).

On July 21, 1883, the court, "without suspending the operation of the decree of December 14, 1880," yet held up the vital question in it—whether the stockholders were liable at all for their unpaid subscriptions—for future consideration; and authorized Glenn to make compromises (Rec., p. 228).

On February 15, 1886, the court made a reference to a special commissioner to inquire and report whether a further assessment on the capital stock would not be required (Rec., p. 285). Notice of this reference was sought to be given to the company by service on Joseph R. Anderson (Rec., p. 29), who had in the very beginning of the proceedings denied that he was a director and repudiated all con-

nection with the company (Rec., p. 62). Upon the commissioner's report (Rec., p. 288), the court on March 26, 1886, passed a decree making a final assessment of fifty per cent. on the subscriptions to the capital stock of the company, and directing Glenn to proceed to collect it (Rec., p. 287). This is the foundation of the present suit.

The greater part of the record in this case, it will be noticed, is composed of two exhibits—Exhibit A being the transcript of the record of the proceedings in the Virginia State court (Rec., p. 25–298); and Exhibit B, which is the transcript of the record in the Reynolds case in the United States circuit court for Virginia (Rec., p. 303–346)—both offered and admitted in evidence in this case.

The plaintiff's declaration set forth his claim as substituted trustee under the deed of trust executed by the National Express and Transportation Company on September 20, 1866, and the decrees of the Virginia court of December 14, 1880, and March 26, 1886 (Rec., p. 1–11). The defense was the general issue, the statute of limitations, that the State court of Virginia had no jurisdiction in the premises, and that the plaintiff could not maintain suit in his own name (Rec., p. 17). Upon the issues joined upon these pleas, the testimony offered was that of the two records which have been mentioned (Rec. p. 25–346).

The trial court ruled that the plaintiff was not entitled to recover; and the general term sustained the decision (Rec., p. 347, 349).

Five bills of exception were taken by the plaintiff at the trial. The *first* is based on the refusal of the court to exclude the record of the Reynolds case in the United States circuit court for Virginia; the *second*, on the refusal of the court to instruct the jury that, inasmuch as the suit was brought within three years after the decree of the Virginia court of March 26, 1886, the plea of the statute of limitations constituted no defense; the *third*, on the refusal of the court to rule that the decree of the Virginia court of July 21, 1883,

constituted no defense to this suit; the *fourth*, on the instruction granted by the court on behalf of the defendant, that the plaintiff could not maintain this suit in his own name; and the *fifth*, on the charge of the court to the jury to return a verdict for the defendant (Rec., p.. 346–348). And on these five bills of exception *ten* assignments of error are based (Rec., p. 351–354). Of these assignments the first five are based in their order on the five bills of exception; the *sixth* is on the ground of the refusal of a new trial; the *seventh* is only a reaffirmance of the exception to the ruling that the plaintiff was not entitled to maintain the suit in his own name; the *eighth* is an allegation that due effect was not given to the decree of the State court of Virginia, and that the Constitution of the United States was thereby violated; the *ninth* is a second renewal of the grievance supposed to accrue from the refusal of the court to allow the plaintiff to maintain the suit in his own name; and the *tenth* is a general assignment of "other manifest errors."

II.

BRIEF OF ARGUMENT.

A.

We presume that the sixth, seventh, ninth, and tenth assignments of error require no argument, except in so far as they are involved in the previous assignments. And important as is the Constitution of the United States, it does not seem to be at all necessary to expend any argument on the eighth assignment. It would seem also to be right and proper to dismiss the first assignment summarily. It is based on an objection to evidence—the introduction of the record of the Reynolds case—for which no reason whatever is assigned; and this Court has decided that objections to evidence so general as not to indicate the specific grounds

upon which it is made will not be considered by this Court (*Noonan* vs. *Caledonia Gold Mining Company*, 121 U. S., 393). But plainly there is no good reason for the objection. This record is undoubtedly proper testimony.

The questions raised in this case may be reduced to three:

1st. Can the plaintiff maintain this suit in the District of Columbia in his own name?

2d. Did the Virginia State court have jurisdiction to render the decrees upon which the suit is based?

3d. Is not the suit barred by the statute of limitations of the District of Columbia?

1.

Can the plaintiff maintain this suit in his own name?

In view of the notorious fact that the common law is in force in the District of Columbia, unchanged in this regard by any statutory enactment, and that it is an elementary principle of that law that the assignee of a chose in action cannot sue upon it in his own name, it is very singular that we should be called upon to discuss this question. That the plaintiff is an assignee of a chose in action, is too plain for argument; and that he is therefore debarred from maintaining this suit, is equally plain.

But the principle is attacked as a "relic of departed things;" and therefore the court is urged to disregard it.

It is very true that in many, perhaps in most, of the States of the Union this rule of the common law has been repealed or modified by statute. But it remains the law of the District of Columbia; and we have found no evil result from its continued existence. Assignees of choses in action are entitled in the District of Columbia to use the names of their assignors, and in those names, for their use, to maintain suits in the choses in action assigned to them. This is the usual course; and it was open to the plaintiff to adopt

it; and his persistent and repeated refusal to follow the usual course in the numerous suits instituted by him in the District of Columbia justifies the suspicion that there was some ulterior motive in the institution of these suits in his own name. Why does he persist in this course, when there is no reason whatever why the suit should not be instituted in the name of the company to his use?

The plaintiff is a trustee, substituted by the decree of a court of equity, if the decree was valid, in the place and stead of certain other trustees to whom the insolvent corporation had assigned its assets, including, as it is claimed, the right to the unpaid subscriptions to the capital stock. The deed of trust upon its face was a conveyance in fraud of creditors; and the circuit court of the United States for the district of Virginia did not hesitate to disregard it in the Reynolds case, and to order the trustees named in it to surrender and transfer to its own receiver any assets of the company which they might have acquired under it (Rec., p. 333). The State court, however—under a misapprehension of the facts, as it seems to us—held it valid (Rec., p. 181). For the present assuming that the State court was right and that the deed of trust was valid, this plaintiff took no higher or better title than those in whose place he was substituted; and they were unquestionably, so far as the subscriptions to stock are concerned, no more than mere assignees of choses in action. A suit by either in the District of Columbia should be in the name of the company, their assignor.

It might be questioned, perhaps, whether the decree of the court by which the plaintiff was substituted in the place of the original trustees in the deed of trust did or could vest in him any legal right or title in the premises without a deed of conveyance by them to the plaintiff. But this is a question of minor importance.

It is sought, however, to take this case out of the well-established and inexorable rule of the common law on two

grounds: 1st. The theory that the defendant, being a stockholder of the company, and therefore bound by the action of the company in all matters which the company may lawfully do, and bound also by the action of the court which made the assessment or call on the subscription, must be held to have thereby assented to the assignment and promised to pay the assignee or assignees; and, 2nd, the theory that the decree of the State making the assessment *created* the cause of action and created it for the first time in the present trustee. With all due respect, we must characterize this argument as the merest sophistry.

In the case of *Jackson* vs. *Tiernan* (5 Peters, 580), this Court, by Mr. Justice Story, distinctly stated the cases in which an assignee, in the absence of statute, might bring suit in his own name. There the Court says:

"The general principle of law is that choses in action are not at law assignable. But if assigned, and the debtor promise to pay the debt to the assignee, the latter may maintain an action for the amount against the debtor as money received to his use. Independently of such promise there is no pretense that an action can be sustained. * * * All these cases (referring to cases previously discussed) are distinguishable from the present. They are either cases where there was an express promise to hold the money subject to the order of the principal, or there was an implied promise to pay it over as it was received to the use of a particular person. The express promise to pay to order bound the party, and excluded any claim for a lien and any defense for want of privity between him and the holder of the order. The receipt of the money for the use of any particular person necessarily implied a promise or obligation to hold it in privity for such person."

The plaintiff does not come within either of the two excepted cases. It would be a perversion of language to say that there was any promise, express or implied, by any stockholder to pay the amount of his subscription to the trustees in this deed of trust. The stockholder promised to

pay his subscription to the company, and to no one else, according as the board of directors, or (by implication of law) a court of equity of competent jurisdiction might demand it.

Again: the only cases in which, under the distinction taken in the case of *Jackson* vs. *Tiernan*, an assignee of a chose in action has ever been allowed to sue in his own name are when he is in fact the equitable owner of the chose in action, adversely even to the assignor. This assignee is the mere agent of the company here, nothing more than a voluntary receiver to take its property and settle its affairs. The treasurer of the company might as well sue in his own name as this assignee.

But it is argued, in the second place, that this cause of action did not exist in the original trustees; that it was created by the decree of the State court that made the assessment; and that it existed for the first time in this trustee under and by virtue of the terms of that decree. And it is stated also that the Virginia courts, or some of them, have held that this trustee Glenn might maintain such suits as this in his own name.

With regard to the statement in the last sentence, it is sufficient answer to say that the courts of Virginia can neither make nor declare the law of the District of Columbia; and least of all, can they overturn the settled law of this District.

The claim that the plaintiff may maintain this suit because the cause of action did not exist before the decree that made the assessment, and that the cause of action was created for the special benefit of the plaintiff, seems so absurd that it is difficult to consider it calmly and seriously. The defendant stockholder contracted with the company at the time when he became a stockholder. His liability began at that time. He then promised, on consideration of being admitted as a stockholder, to pay to the company a certain sum of money in such instalments and at such times as the

company or its board of directors might determine. The liability was certain, definite, and fixed, in its very inception. The time of payment was left uncertain, to be fixed by the board of directors; in that respect it was like a promissory note payable on demand. It was also left uncertain in what instalments the money would be called for; but evidently this did not render the liability at all uncertain. It is true it might never be called for; and neither might a demand note. The obligation to pay, however, remained the same, if it should be called for, and whenever it should be called for; and that obligation was contracted when the defendant became a stockholder. It is absurd to claim that a court could under any circumstances *create* a liability for parties. Under our system of law that is beyond any human power to do. Liabilities can be created only by parties themselves, or those acting for them; it is for courts only to construe and enforce them. It was for the court, in this case, to determine what had been left in the original contract to one of the parties to determine, the time and amount of instalment, which that party had failed to determine; but it did not make any contract for the parties; and most assuredly it could not create a cause of action unless it could and did make a contract. Possibly the contract previously made could not have been sued on before the action of the court; just as a liability that requires a previous demand to fix (not create) it can not be sued on until the demand is made. But this has nothing to do with the question of an assignee or trustee suing in his own name—upon a chose in action assigned to him.

The plaintiff's argument in this regard, however, is inconsistent with the residue of his contention. It necessarily implies that the plaintiff is neither a trustee nor an assignee at all, but a receiver appointed by the Virginia court to collect the assets of this company. If he is a receiver, he is a foreign receiver; and, in the absence of statute, a receiver

can not sue in his own name outside of the jurisdiction which creates him (*Booth* vs. *Clark*, 17 Howard, 322).

There seems to be no escape from the dilemma that this plaintiff is either the assignee of a chose in action or a foreign receiver. In neither capacity can he maintain suit in his own name in the District of Columbia; and no reason whatever appears why he should not have used the name of his company, which he was at perfect liberty to use.

It may be remarked that in the case of *Hawkins* vs. *Glenn* (131 U. S., 319) and other subsequent cases in this Court, this point was not made, and could not have arisen, for the reason that in the States from which these cases came the common-law rule has been modified by statute. The point was made in the case of *Glenn* vs. *Fant* (134 U. S., 398), which came up from the District of Columbia; but the Court dismissed that case on the ground that it contained no bill of exceptions that would enable the Court to review the case.

In the case of *Kennedy* vs. *Gibson* (8 Wall., 498), the receiver of a national bank was held entitled to bring suit in his own name; but this was under the special provisions of the National Banking Act. It was the case of a *statutory* receiver; and moreover it could scarcely be claimed that he was a foreign receiver.

If the Court requires further argument on this subject, it is respectfully referred to the able and unanswerable opinion of Mr. Justice Cox in the case of *Glenn* vs. *Busey* (5 Mackey, 233) in the supreme court of the District of Columbia, which is referred to in the decision in this case as the authority for such decision.

2.

The second question in this case is, whether the State court of Virginia had jurisdiction to render the decrees upon which this suit is based.

We respectfully submit that neither the chancery court of the city of Richmond nor the circuit court of Henrico county had any jurisdiction whatever in the premises, and that the decrees in question are an absolute nullity.

In all the other cases in this Court instituted by this same plaintiff for similar causes of action, other than the case of *Glenn* vs. *Fant*, above referred to, such as *Hawkins* vs. *Glenn* (131 U. S., 319), *Glenn* vs. *Taussig* (135 U. S., 533), the record of the Reynolds case in the U. S. circuit court for Virginia does not appear, and those cases were decided entirely without reference to it. And yet the action of the U. S. circuit court is a most important factor in this controversy.

From the statement heretofore given and the record now before the Court it appears plainly that, before the Virginia State court was called upon to act, the circuit court of the United States for the District of ~~Virginia~~ Virginia had acquired exclusive control and jurisdiction of this insolvent corporation, The National Express and Transportation Company, and of its assets and affairs; and had appointed its receiver to take charge of those affairs, to reduce those assets into his possession, and to collect the unpaid subscriptions for stock; and the receiver had entered upon the performance of his duties, and had taken possession of such assets as he could find (Rec., p. 303, 344). And this condition of things existed, the jurisdiction of the circuit court continued, and the receiver was acting, at the time the Glenn proceedings were instituted in the Virginia State court, and for nine years afterwards. Under these circumstances, was it not a fraud upon the company, a fraud upon its stockholders, and a gross contempt of the authority of the Federal court to invoke the intervention of the State tribunal? We think that this Court has already very distinctly laid down the law in several cases, that when property has come under the control and dominion of a court of competent jurisdiction, and is in course of administration by that court, no

other court can acquire jurisdiction of the same or of any part of it.

Heidritter *vs.* Elizabeth Oil Cloth Co., 112 U. S., 294.
Barton *vs.* Barbour, 104 U. S., 126.
Peale *vs.* Phipps, 14 Howard, 368, 374.
Wiswall *vs.* Simpson, 14 Howard, 52.

In the case of *Heidritter* vs. *Elizabeth Oil Cloth Co.*, Mr. Justice Matthews, in delivering the opinion of the Court, said:

"The Court had taken possession of the property, and that possession was necessarily exclusive. The *res* was thereby drawn into the exclusive jurisdiction and dominion of the United States court; and for the purposes of that suit, it was at the same time withdrawn from the jurisdiction of the courts of New Jersey. Any proceeding against it, involving the control and disposition of it in the latter, while in that condition, was as if it were a proceeding against property in another State. *It was vain, nugatory, and void;* and as against the proceedings and judgment of the district court of the United States, and those claiming under them, was without effect."

It is objected in this connection on behalf of the plaintiff, that the Reynolds suit was a stockholder's bill, and the Glenn suit a creditor's bill; and that therefore they might be prosecuted simultaneously in different courts. This objection is most flagrantly flimsy. The avowed purpose of both bills was the same, to wind up the corporation, collect its assets, and pay its debts: and the important fact is that both courts could not have its assets at the same time. If the receiver of the Federal court was entitled to call upon the stockholder to pay the amount of his subscription, as he undoubtedly was entitled to do, certainly the stockholder should be protected in his payment to him, and should not be subjected to be called upon to pay again to the receiver, or assignee, or trustee appointed by a State court.

The matter of the collection and disposition of the assets of the National Express and Transportation Company having therefore been assumed by the Federal court in Virginia, a tribunal unquestionably of competent jurisdiction, the State court could not, and did not, acquire jurisdiction of them; and the collection and disposition of those assets was a matter entirely beyond its control.

Under the circumstances, the State court did not have jurisdiction of the parties. The rule laid down in *Sanger* vs. *Upton* (91 U. S., 61), *Scoville* vs. *Thayer* (105 U. S., 153), and *Hawkins* vs. *Glenn* (131 U. S., 334), that in proceedings for the winding up of the affairs of a corporation it is not necessary that individual stockholders should be made parties in order that the proceedings should be binding upon them, we accept cheerfully as a proper rule of law. The reason of the rule is stated to be that, for such purposes, the corporation represents the stockholders. But how can it be said that a corporation represents its stockholders after it has been inhibited by a court of competent jurisdiction from so doing, and when a receiver has been appointed in its place to perform its functions? The receiver of the Federal court, with the consent of that court, was the proper person to be sued in this case; or if the suit could have been maintained at all, and it was expedient to make the company a party, it was indispensable that notice should have been served on the Federal receiver. The complainant in the State court claimed that he was a creditor of the company; and apparently what he sought was the payment of his debt. It was for the receiver to do that; and the receiver therefore should have been impleaded. This is the express decision of this Court in several cases.

Express Co. *vs.* Railroad Co., 99 U. S., 191.
Doggett *vs.* Railroad Co., 99 U. S., 72.
Davis *vs.* Gray, 16 Wallace, 203.
Osgood *vs.* Maguire, 61 N. Y., 514.

In regard to the question of the jurisdiction of the State court over the parties, we desire here also to suggest that the alleged service of process in the suit instituted in the Virginia State court was insufficient to bring the company into court, even if there were no objection to the suit on account of the previously acquired jurisdiction of the Federal court. That service, as already stated, was upon a local officer, the cashier of one of the territorial divisions in which the company acted (Rec., p. 41), and upon an alleged director, Joseph R. Anderson (Rec., pp. 62, 63). The cashier was not "the cashier or treasurer of the company," the general officer contemplated by the statute; and the alleged director had ceased to be a director before the company ceased its operations. (Rec., p. 63.)

Anderson denied in his answer that he was a director (Rec., p. 63). The Virginia court in this connection said:

"This answer is sufficient to throw upon the plaintiffs the burden of showing that he was a director when the process was served. With that *onus* upon them, the evidence in the record is abundantly sufficient. Gen. Anderson appeared as director in the very last meeting of the directors which was ever held; and that meeting was subsequent to the last meeting of the stockholders. He could, therefore, never have divested himself of the official relation to the company." (Rec., p. 267.)

It is most extraordinary and most inexplicable that the Court should have been so grossly misled both as to the law and the facts in the case. There is nothing in the record from beginning to end to show that the one meeting of November 1, 1866, at which Mr. Anderson was, by the board of directors, elected one of their number (Rec., p. 211) and in which he acted, was the last meeting of that board; and there is nothing to show that there was no meeting of the stockholders thereafter. And the inference that he could not have resigned, except to a meeting of stockholders, is directly in the face of the charter and by-laws

of the company, which authorize such resignations to be tendered to the board itself (Rec., p. 212).

To say the least of it, this process, upon which it is sought to bind this company and all its stockholders, is of exceedingly doubtful validity; and in such cases there ought to be no room for question. In all the cases in this Court, in which it was held that the company represented the stockholders, there never was any question of doubtful service of process. And yet upon such doubtful service as this it is now sought to base claims of vast extent.

But it may be claimed that the want of jurisdiction in the State court of Virginia was remedied by the dismissal of the proceedings in the Federal court and the discharge of the receiver four days before the final decree of the State court.

The dismissal of proceedings and the discharge of the receiver in the Federal court was a fraud. It was done without notice to any one; it was done at the instance of one who had no standing in the case. It was done for the purpose of bolstering up the illegal proceedings had in the State court. But even if it had been regularly and properly done, it is not clear how proceedings, which were utterly void from the beginning for the want of jurisdiction, could have all at once become valid without giving the parties in interest their day in court. This is an absurdity, which it seems wholly unnecessary to attempt to controvert by argument.

It may possibly be suggested that, before the filing of the Glenn suit in the Virginia State court (November 28, 1871), the Reynolds suit in the Federal court had been abated by the death of the complainant Reynolds, which occurred before August 22, 1870, although the precise time of it does not appear (Rec., pp. 337, 339). But to this the answer is obvious:

1st. That the bill filed by Reynolds was expressly not only for his own benefit but also for that of all other stock-

holders of the company who might come into it (Rec., p. 303); and on February 2, 1870, one Washington Kelly, another stockholder, did come into it as a party complainant, and by an order of the court was admitted as such (Rec., pp. 337, 337), and thereupon filed an amended and supplemental bill in the nature of a bill of revivor, on August 22, 1870 (Rec., p. 337). In this supplemental bill is found the allegation of the death of Reynolds (Rec., p. 339), no time, however, being mentioned. By this proceeding undoubtedly, if not otherwise, the suit was kept alive.

2d. In the second place, suits in equity do not abate by the death of a party, or even of all the parties. They may get into a condition of suspended animation, but they do not die. Only a final determination by the court, or a dismissal of proceedings by the parties, can terminate a suit in equity.

Clarke *vs.* Matthewson, 12 Peters, 164.
Illinois Central R. R. Co. *vs.* Turrill, 110 U. S., 301.

3d. And, in the third place, this suit certainly could not have abated, inasmuch as the *res*, the affairs of the corporation and its assets, were in the hands of the court by its receiver; and until that receiver was discharged and the assets released by the court from its custody, abatement or no abatement, there could be no valid proceeding in any other tribunal to reach those assets.

3.

It is submitted, in the third place, that the claim sued on here was barred by the statute of limitations of the District of Columbia at the time this suit was begun.

In *Scovill* vs. *Thayer* (105 U. S., 143), it is said: "When stock is subscribed to be paid upon the call of the company, and the company refuses or neglects to make the call, a

court of equity may itself make the call, if the interests of the creditors require it. The court will do what it is the duty of the company to do. * * * But under such circumstances, before there is any obligation upon the stockholder to pay without an assessment and call by the company, there must be some order of a court of competent jurisdiction, or at the very least some authorized demand upon him for payment; and it is very clear the statute of limitations does not begin to run in his favor until such order or demand."

And this language is quoted with approval in the case of *Hawkins* vs. *Glenn* (131 U. S., 319, 333), which was a suit by this same plaintiff under the same decree referred to in these proceedings, that of December 14, 1880, calling for thirty per centum of the unpaid subscriptions; but in which suit the record of the Reynolds suit in the Federal court was not introduced,—probably because Hawkins and his counsel in the trial court were unaware of it.

Now, it being unquestionably the law laid down by this Court that, under the circumstances, the statute of limitations does not begin to run until there is an order by a court of competent jurisdiction or some authorized demand upon the stockholder, the converse of the proposition must necessarily be true, that when there is such an order or demand, the statute begins to run. Our proposition is, that this order and demand were made by the Federal court in Virginia in the Reynolds case, on December 31, 1866, when it appointed its receiver for this company, and directed him to "proceed to collect and recover" "any sums due upon the shares of the capital stock of said company," and "for this purpose to prosecute actions at law or in equity for the recovery of such sums in his own name as receiver or otherwise as he may deem best." By that order the receiver was vested with title to all the property of the company, specifically including "assessments due on stock." (Rec., p. 332, 333.)

Here was unquestionably an order of the court and a direction for the payment by the stockholders of *all* sums remaining unpaid by them on account of their subscriptions, and a direction to the receiver to enforce the payment of these subscriptions. Undoubtedly, under this order, the whole of the unpaid subscriptions became due and payable on December 31, 1866; and the statute of limitations began to run on that day in favor of the stockholders. And if the statute of limitations began to run on that day, no other term of any kind could have been created by any suit, or by any other order, call, or assessment. Certainly no subsequent order or call, even by a court having jurisdiction of the subject-matter and the parties, could modify the effect of this first order so as to impair the rights of the stockholders as debtors to the corporation with reference to the statute of limitations.

As we have already remarked, the record of the Reynolds suit was not introduced in the case of *Hawkins* vs. *Glenn* (131 U. S., 319); and the decision in that case is based upon the facts apparent in the case. What we claim here is a state of facts different from those in the Hawkins case, so far as the statute of limitations is involved.

4.

We submit, in conclusion, that the judgment of the court below was entirely right and proper, on three grounds:

1st. Because, under the common law in force in the District of Columbia, the plaintiff, being either the assignee of a chose in action or a foreign receiver, cannot maintain suit in his own name on the chose in action in this District.

2d. Because the action of the Virginia State court under which he claims was absolutely without jurisdiction, and null and void from beginning to end.

3d. Because the claim was long since barred by the statute of limitations, which began to run from the date of the assessment or order made by the United States district court of Virginia on December 31, 1866.

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